

California Real Estate Principles Workbook

Fifth Edition



This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

CALIFORNIA REAL ESTATE PRINCIPLES WORKBOOK FIFTH EDITION

©2022 Kaplan North America, LLC

Published by DF Institute, LLC, d/b/a Dearborn Real Estate Education and Kaplan Real Estate Education
1515 West Cypress Creek Road
Fort Lauderdale, Florida 33309

All rights reserved. The text of this publication, or any part thereof, may not be reproduced in any manner whatsoever without written permission from the publisher.

10 9 8 7 6 5 4 3 2 1

ISBN: 978-1-0788-3053-9

CONTENTS

UNIT 1

Property Ownership and Land-Use Controls.....	1
Learning Objectives	1
Key Points—Unit 1.....	1
Real Estate/Real Property	3
Personal Property (Chattel)	4
Law of Fixtures	5
Physical and Economic Characteristics of Land	6
Legal/Formal Methods of Land Description.....	7
Government Land-Use Controls.....	11
Unit 1 Glossary Review.....	15
Unit 1 Quiz.....	16
Glossary Review and Quiz Answer Keys.....	19

UNIT 2

Rights and Interests in Land.....	21
Learning Objectives	21
Key Points—Unit 2.....	21
Governmental Rights in Land	23
ORs and EEs Table	24
Estates in Land.....	24
Encumbrances.....	26
Licenses.....	30
Unit 2 Glossary Review.....	31
Unit 2 Quiz.....	32
Glossary Review and Quiz Answer Keys.....	35

UNIT 3

Transfer of Property, Recording, Title Insurance, and Taxation	37
Learning Objectives	37
Key Points—Unit 3.....	37
Forms of Ownership.....	39
Conveying Ownership	42
Conveyance After Death	45
Other Ways of Acquiring Rights (Involuntary Alienation)	45
Public Recording System	46
How Marketable Title Is Determined	48
Title Insurance Policies.....	49
Suit to Quiet Title.....	50
Taxation and Homeownership	51
Unit 3 Glossary Review.....	55
Unit 3 Quiz.....	56
Glossary Review and Quiz Answer Keys.....	59

UNIT 4

Real Estate Contracts, Settlement/Closing Procedures, Escrow, and Prorations	61
Learning Objectives	61
Key Points—Unit 4.....	61
How a Contract Is Created.....	63
Classification of Contracts.....	63
Stages of a Contract.....	64
Essential Elements of a Valid Contract.....	65
Performance and Discharge.....	68
Remedies for Breach of Contract/Default	69
Types of Real Estate Contracts.....	70
Settlement/Closing Procedures	74
Proration	76
Unit 4 Glossary Review.....	79
Unit 4 Quiz.....	80
Glossary Review and Quiz Answer Keys.....	83

UNIT 5

Property Valuation and Financial Analysis	85
Learning Objectives	85
Key Points—Unit 5.....	85
Appraisal	87
Value.....	88
Principles of Value.....	89
Methods of Valuation.....	91
Reconciliation	95
Unit 5 Glossary Review.....	96
Unit 5 Quiz.....	97
Glossary Review and Quiz Answer Keys.....	100

UNIT 6

Financing, Mortgages, Deeds of Trust, Lending Practices, and Loan Programs	103
Learning Objectives	103
Key Points—Unit 6.....	103
Financing Documents	105
Miscellaneous Mortgage Terms	109
Foreclosure.....	110
Deed In Lieu of Foreclosure and Short Sale.....	111
Methods of Principal and Interest Payment.....	111
Subprime and Predatory Lending	113
Seller Financing	114
Conventional Loans.....	115
Government Financing Programs.....	115
Influences on and Sources for Real Estate Loans.....	117
Unit 6 Glossary Review.....	119
Unit 6 Quiz.....	120
Glossary Review and Quiz Answer Keys.....	123

UNIT 7

Laws of Agency, Listings, Trust Accounts, and Fair Housing.....	125
Learning Objectives	125
Key Points—Unit 7.....	125
The Obligations of the Brokerage Firm	127
Agency Relationships.....	127
Brokerage Relationship Disclosure Requirements	130
Sherman Antitrust Law.....	130
Agency Agreements/Brokerage Agreements	131
Warranties.....	135
Broker's Trust Account.....	136
Fair Housing Laws	137
Unit 7 Glossary Review.....	142
Unit 7 Quiz.....	143
Glossary Review and Quiz Answer Keys.....	146

UNIT 8

Practice of Real Estate, California License Law, and Disclosures	149
Learning Objectives	149
Key Points—Unit 8.....	149
Property Transfer Disclosures	151
Environmental Disclosure Requirements.....	152
Consumer Protection Laws	155
Ethics for Real Estate Professionals	157
Disclosure and Practicing Within Levels of Competence	157
California License Law.....	158
Licensing Requirements.....	160
Unit 8 Glossary Review.....	162
Unit 8 Quiz.....	163
Glossary Review and Quiz Answer Keys.....	166
Appendix: Answers to Outline Fill-Ins.....	169
Glossary.....	177

UNIT 1

Property Ownership and Land-Use Controls

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **discuss** the concepts of land and ownership rights in real property;
- › **distinguish** between real and personal property and how they are transferred;
- › **identify** and **explain** the methods for describing land and real property;
- › **explain** how land use is classified and affected by restrictions tied to police power, zoning deviations, and disclosures.

KEY POINTS—UNIT 1

- There are two types of property: real property and personal property. Real property is the land, anything affixed to the land, and rights and interests in the land. Real property is conveyed by a deed.
- Personal property includes items not attached to the land that may or may not be conveyed when the property is sold. Each item of personal property is listed in and conveyed by a bill of sale.
- Rights and interests in the land include air rights, water rights, mineral rights, oil and gas rights, and support rights. Improvements may be natural (growing) or man-made (fixtures). Personal property attached to the improvements becomes a fixture. Land is not classified as a fixture.
- The tests for distinguishing fixtures from personal property are based on determining the intent of the parties. The tests include the method of attachment, adaptation of the item to the property, the relationship of the parties, and any provisions in a written agreement. Fixtures are considered real property and are conveyed in the deed.
- Land has physical and economic characteristics that help to determine the value. Location, scarcity, improvements, and area preference all are used to help determine the value of a parcel of land.

- A potential disadvantage to real estate ownership is that land is not a liquid asset.
- All valid deeds must contain a legal description of the land being conveyed. There are three major types of legal descriptions: metes and bounds, rectangular survey, and recorded plat.
- The metes-and-bounds method describes land by a series of measurements and boundaries. It starts at a defined “point of beginning” and then describes the boundaries of the parcel until an enclosed tract of land has been described.
- The rectangular survey (or government survey) describes land by reference to a system of grids. A series of ranges, tiers, and townships relative to a principal meridian and a base line are used to locate the property.
- The recorded plat method describes land by referring to a lot number on a plat map that has been filed and recorded with the county recorder. Because the plat map contains a detailed description of the land, simple reference to the plat map is sufficient. This method is also called the lot and block or the subdivision plat method.
- A survey may be used to establish and find property boundaries. Surveys will also identify encroachments.
- The purpose of land use controls is to alleviate problems caused by haphazard, unplanned growth of urban areas, and to promote more rational development in the future.
- Zoning laws are also meant to protect the health and safety of the community's inhabitants.
- Buffer zones are used to separate areas with incompatible uses.
- Zoning ordinances, which are set at a local level, may be amended. A zoning amendment must be justified by the needs of the community.
- A nonconforming use is a pre-existing use that was already legally in place when a new zoning ordinance came into effect, and now the use does not comply with the requirements of the new law. Although nonconforming uses are generally allowed to remain, they may be subject to certain restrictions. A nonconforming use usually cannot be rebuilt if it is destroyed.
- A variance is permission to build a structure or use property in a way that would not otherwise be allowed. Variances are usually granted when strict compliance with the zoning ordinance would cause undue hardship to the property owner.
- A zoning authority can issue conditional use permits (special use permits) for uses that would ordinarily not be allowed in a zone. Permits are granted subject to conditions that limit the adverse effects of the use on the neighborhood.
- Buyers should call the local zoning department to verify that the use they anticipate for the property is allowed.
- The purpose of building codes is to protect the public health and safety. Building codes set minimum standards for construction materials, plumbing, electrical codes, and the structural integrity of a building. A building permit must be granted before construction can begin. A certificate of occupancy will be issued once the building is complete and a final inspection verifies that the builder has complied with the codes.

I. REAL ESTATE/REAL PROPERTY

A. Key points

1. Real property is immovable.
2. Real property includes land plus appurtenances that benefit the land.
 - a. _____ are attached to and run with the land.
 - i. An example of an appurtenance is a parking space in a multi unit building.
 - b. All appurtenances, improvements, rights, interests, privileges, and fixtures will automatically transfer to the new owner, via a deed, when the property is sold.

B. Land

1. _____ rights
2. _____ rights
3. _____ rights

C. Improvements

1. Items _____ with the intent of _____
 - a. Examples: _____, _____, road, landscaping

D. Rights

1. Three forms of rights
 - a. Rights in land, such as air, water, and mineral rights
 - b. Rights of ownership, such as the right of an owner to possess, transfer, and control the property
 - c. Governmental rights, which give the government the right to determine land use, set taxes, and take back property through eminent domain or escheat (governmental rights and ownership rights will be covered in Unit 2)
2. Rights in land
 - a. Air rights
 - i. Rights extend as high as can reasonably be used.
 - ii. The government controls air space.
 - iii. Owners may not interfere with these rights.

b. Water rights

i. The government controls water rights and grants permits for the beneficial use of water, such as irrigation, under _____.

Riparian—_____

Littoral—_____

— Note: Both are often tied to navigation rights

_____—addition to land through natural (_____) or humanmade (_____) causes

_____—sudden loss of land through natural causes

_____—gradual loss of land through natural causes

ii. Water rights do not include the right of access. The owner of a water right would not have the right to cross another's property, and would need to obtain an easement to do so.

c. Mineral rights (subsurface rights)

i. May be transferred when property is sold or reserved by seller

ii. Often held by a _____

3. Real estate—transferred by a _____

II. PERSONAL PROPERTY (CHATTEL)**A. Key points**

1. All property that is not real property

a. is movable,

b. is not permanently _____, and

c. typically does not transfer with the real estate.

i. It must be _____ in the purchase agreement to convey with the property.

2. Personal property is transferred by a _____.

III. LAW OF FIXTURES

A. Fixture

1. A fixture is an object that was once personal property that has been _____ so as to become real property.
2. Land is never a _____.
3. Once the fixture (personal property) is attached, it becomes an _____ and is automatically transferred in the deed.

B. Tests for a fixture

1. Method of attachment
 - a. Permanence of method
 - b. _____ = fixture; _____ = personal property
2. Adaptability
 - a. Specific to individual property
 - b. Examples: _____
3. Relationship of the parties
 - a. Tenant—presumption that it is personal property
 - b. Courts favor tenants over landlords and buyers over sellers
4. Intent
 - a. Evidenced by the criteria listed previously.
5. Agreement between the parties
 - a. The _____ regarding the items is the best indication of what will be conveyed.
 - b. Fixtures must be _____ from the purchase agreement if the seller is not going to convey.
 - c. Personal property should be _____ in the purchase agreement if the seller is including them in the sale.

C. Memory aid is MARIA

1. Method of attachment
2. Adaptability
3. Relationship of the parties
4. Intent
5. Agreement between the parties

D. Exceptions—personal property

1. Trade fixtures are tenant-installed additions that are a necessary part of the tenant's trade or business.
 - a. Tenants may remove trade fixtures before the lease termination.
 - b. If not removed by lease termination, the trade fixtures belong to the landlord.
2. Emblements are annually cultivated crops that belong to the tenant farmer who planted them, unless otherwise agreed.
3. If trade fixtures or emblements are transferred, they will be by a bill of sale.
4. Remember to treat personal property and fixtures as follows:
 - a. Personal property must be _____.
 - b. Fixtures must be _____.

IV. PHYSICAL AND ECONOMIC CHARACTERISTICS OF LAND**A. Physical characteristics**

1. Immobile—can't be moved
2. Indestructible
3. Unique (nonhomogeneous/heterogeneous)—all parcels differ geographically

B. Economic characteristics

1. Scarcity
 - a. Although there is a substantial amount of unused land, supply in a given location can be limited.
2. Improvements
 - a. Placement of an improvement on a parcel of land affects value and use of neighboring parcels.

3. Permanence of investment
 - a. Sale of a particular parcel of land may take considerable time.
 - b. _____.
4. Area preference
 - a. People's choices and desires for a given area make one site more desirable than another.

V. LEGAL/FORMAL METHODS OF LAND DESCRIPTION

A. Most common methods

1. The three most common are metes and bounds, rectangular (government) survey, and recorded plat.
2. Legal descriptions do not describe improvements, only the land.
3. Improvements and appurtenances are automatically included in land descriptions.
4. Street addresses are informal descriptions that can change, so they are not considered to be legal descriptions that convey ownership, but they may be used in a contract.

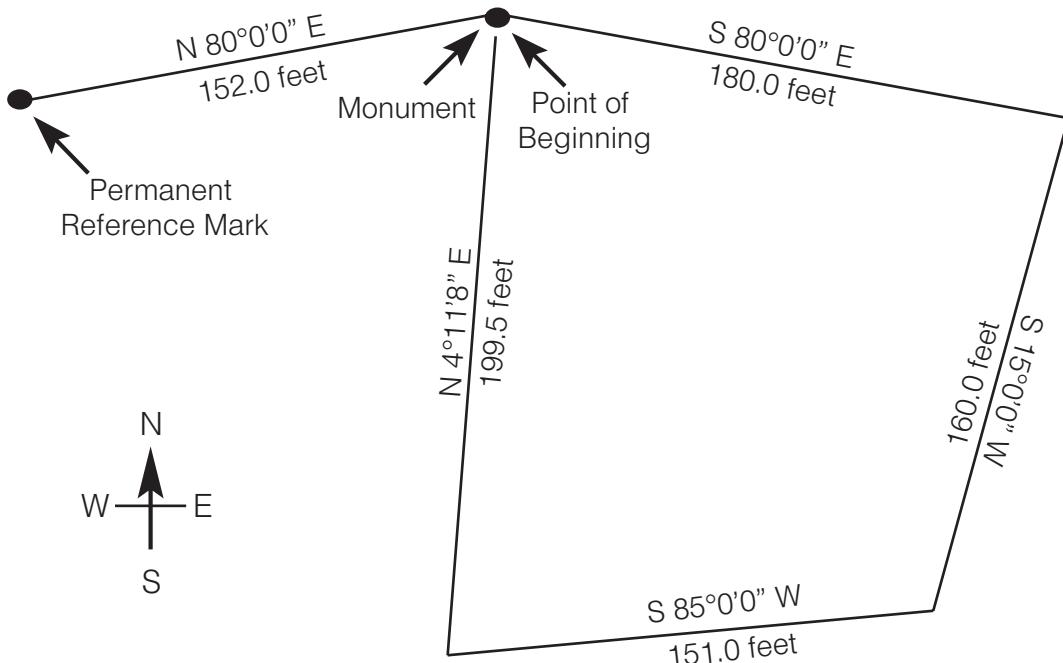
B. Survey

1. A survey is used to _____.
_____.

 - a. It is an onsite measurement of property lines and the location of houses, easements, and encroachments.
 - b. It uses monuments, which are visible markers that establish _____.
_____.

C. Metes and bounds (see Figure 1.1)

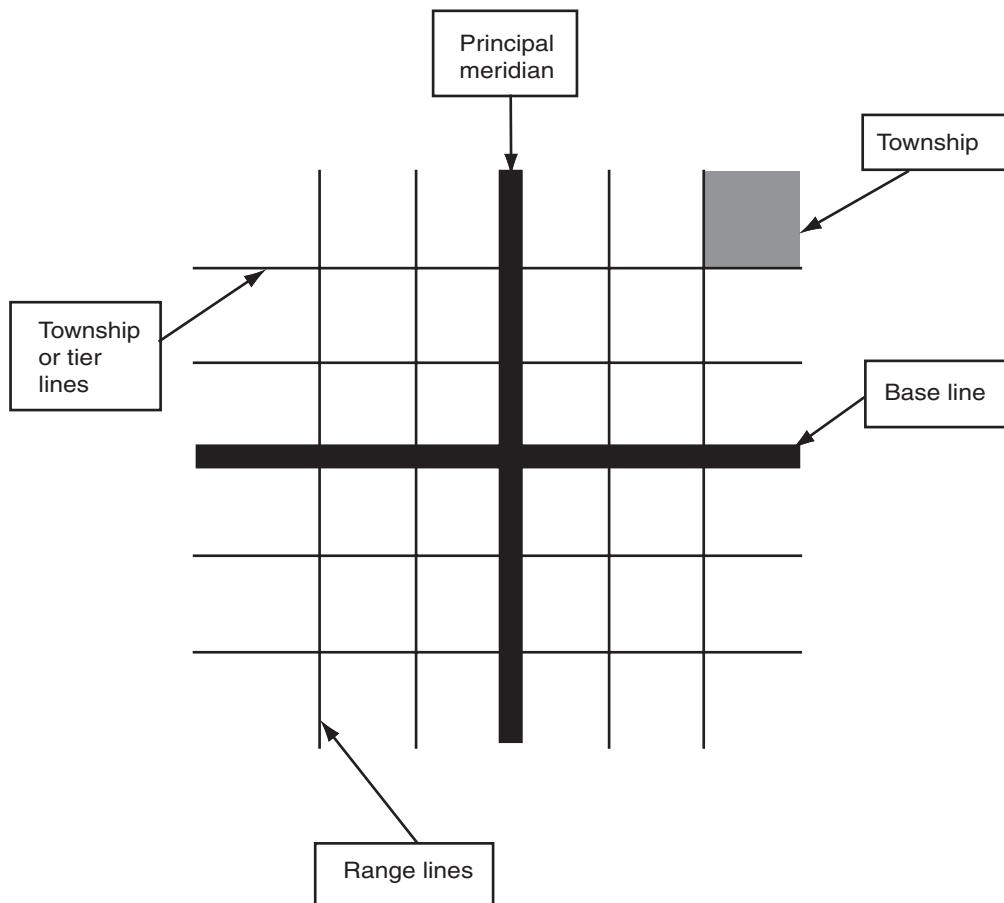
1. Metes: _____
2. Bounds: _____
3. Monuments: fixed objects that serve as _____ for the surveyor when setting boundaries
4. Begins and ends at _____
 - a. It is the only description that uses _____
_____.
 - b. The description must completely encircle the property.
5. Measure in clockwise direction
6. Particularly useful for identifying an irregular-shaped parcel

Figure 1.1: Metes and Bounds

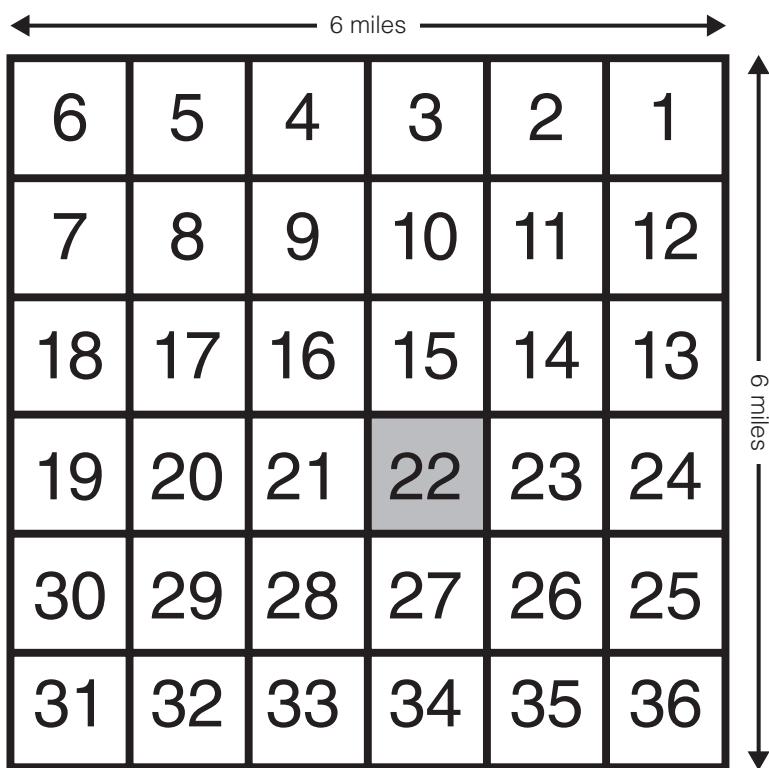
Commencing at the permanent reference mark at the Southwest corner of Section 15, thence North 80°0'0" East 152.0 feet to the point of beginning of the property described herein. Thence South 80°0'0" East 180.0 feet; thence South 15°0'0" West 160.0 feet; thence South 85°0'0" West 151.0 feet; thence North 4°11'8" East 199.5 feet to the point of beginning.

D. Rectangular (government) survey (see Figure 1.2)

1. A rectangular (government) survey is a system developed by the United States government that locates a parcel of land within a grid system, based on its location with reference to meridians and ranges (which run north-south) and baselines and tiers (which run east-west).

Figure 1.2: Rectangular Survey Grid

2. Meridian and base lines are large imaginary reference lines.
 - a. California has three intersecting base and meridian lines:
 - i. Northern California-Humboldt (HB&M)
 - ii. Central California-Mt. Diablo (MDB&M)
 - iii. Southern California-San Bernardino (SBB&M)
3. A township is a square formed by the meeting of ranges and tiers (6 miles by 6 miles) (see Figure 1.3)

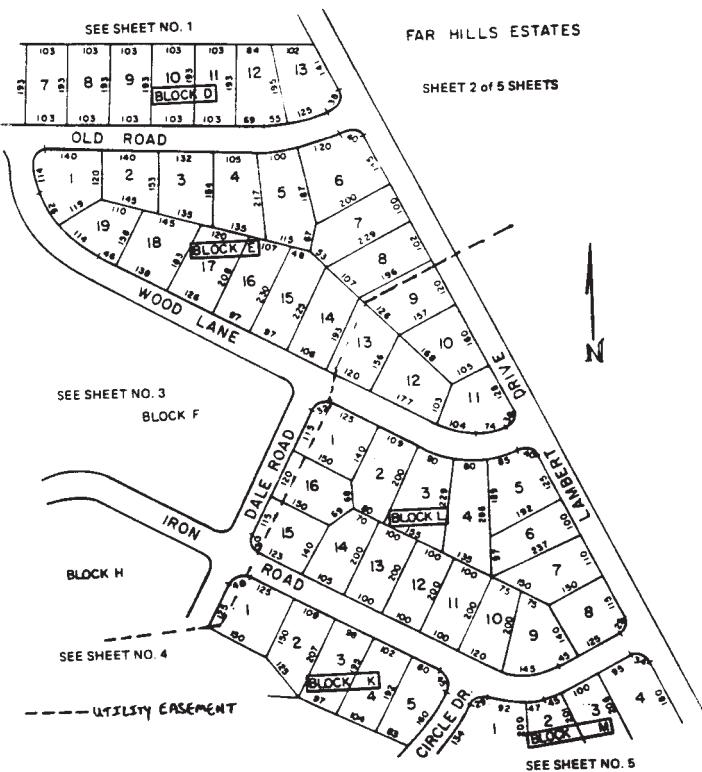
Figure 1.3: Section 22, Township 2 North, Range 2 East

4. A _____ is a vertical row of townships (that lie in an east-west relationship to meridians).
5. A _____ is a horizontal row of townships (that lie in a north-south relationship to base lines).
6. Each township contains 36 sections.
7. A section is 1 mile by 1 mile square and contains _____.
8. An acre contains _____ square feet.

E. Recorded map “plat” (see Figure 1.4)

1. The plat map is also called the “lot, block, subdivision system” or the “lot and block system.”
2. Plat: a _____ showing the location and boundaries of individual lots in a land subdivision.
3. Once the final map is approved, but before building, _____ in the county recorder’s office of the county in which the property is located.
4. This system is most common in _____ areas.
5. Dedication of land to the municipality for construction of a park, school, or other public use might be required to obtain permission for the subdivision map approval.

Figure 1.4: Plat Map



VI. GOVERNMENT LAND-USE CONTROLS

A. Master (comprehensive or general) development plan

1. Land surveys show the present and future use of properties.
2. Economic surveys show the present and future economic base of the area.
3. Master development plans are used to _____.

B. Land-use classifications (set by zoning laws)

1. Residential
2. Commercial
3. Industrial/manufacturing
4. Agricultural
5. Mixed

a. Note: A _____ is an area of land that separates two significantly different land use zones. Parks and open spaces are often used as buffer zones.

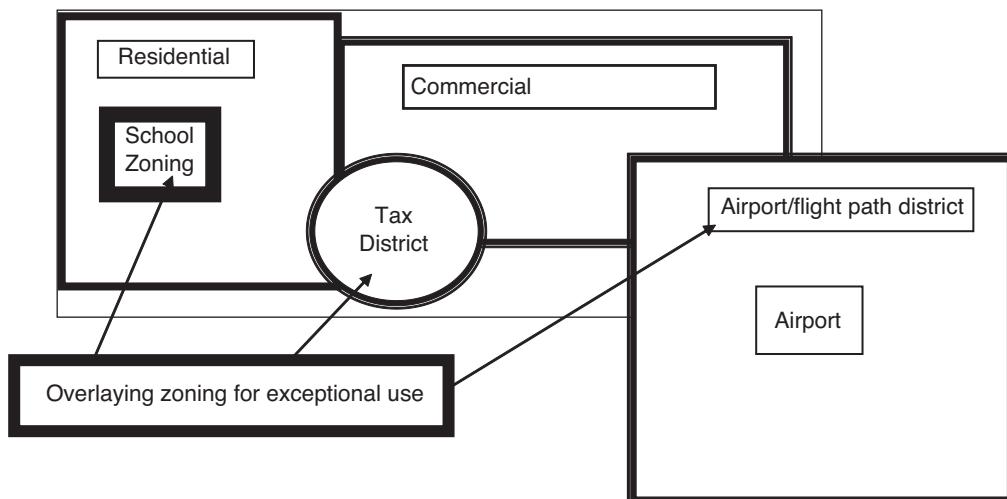
C. Land-use restrictions tied to police power

1. The purpose of these restrictions is to protect against uncontrolled growth, protect public health, and preserve compatibility.
2. All new construction and most renovations require a _____.
 - a. Building permits are used to ensure that property owners are in _____.
 - i. The state sets minimum construction and safety requirements.
 - ii. City or county codes may be more restrictive than the state code.
3. Building codes are primarily concerned with the structural integrity and _____.
 - a. Codes determine the types of construction materials that can be used.
 - i. Sets standard for types of materials and how they are used
 - ii. Separate codes for plumbing, electrical, fire, and so on
 - b. If there is a difference between the national, state, or local building codes, the most stringent is used.
4. _____ are obtained after fulfilling all the requirements of the building permit.
5. Setback/sideyard/rear-yard restrictions specify the location of improvements in relation to boundaries.
6. Building sites have minimum frontage requirements so the government can provide services.
7. Floodplains, coastal preservation, and other special use classifications may be regulated at a local, county, state, or federal level.
8. Flood insurance is typically purchased separately from a standard homeowners policy.

D. Zoning changes/deviations—how land is used

1. Zoning laws and ordinances are set at a local (city or county) level.
 - a. They specify the type of construction allowed.
 - i. Single family, multifamily, or mixed use
 - ii. Style, height, and types of construction

- b. They identify the location and placement of improvements on the property (setbacks).
 - c. A violation of a building code or zoning law does not become legal or acceptable because a certain amount of time has passed (it is not “grandfathered” in).
 - d. Buyers should be told to verify that the zoning will meet their needs before closing.
2. An amendment is a zoning change for an entire area.
 - a. An amendment could cause _____.
3. Nonconforming use allows the owner to continue present use that no longer complies with current zoning, which is often known as _____ or a grandfather clause.
 - a. The owner may not enlarge improvements or rebuild if improvements are destroyed.
 - i. Example: a retail store in a residential neighborhood
 - ii. Transfer of title may require new owner to meet current zoning use
4. A variance allows an individual owner to vary or deviate from strict compliance with zoning in order to relieve or prevent economic hardship.
 - a. Does not change regulation
 - b. Example: a home allowed to be built into the setback
5. A conditional use or special use permit allows a particular property to be used for a special purpose that is in the public’s best interest.
 - a. Example: _____ in residential zoning
6. Overlaying zoning is in addition to basic underlying zoning, such as residential or commercial (see Figure 1.5).
 - a. School, tax, or utility districts
 - i. Taxes are paid to the district by all property owners within the district boundaries.
 - b. Airport or flight paths

Figure 1.5: Overlaying Zoning**E. Disclosures**

1. Brokers and salespersons should explain that it is the _____ to verify that
 - a. the current zoning use and rules will _____,
 - b. the property is not in a floodplain,
 - c. the property has proper access to and from highways and streets, and
 - d. building permits were pulled and completed if required.

UNIT 1 GLOSSARY REVIEW

bill of sale	included	personal property
buffer zone	liquid asset	rectangular (government)
certificate of occupancy	lot, block, and	survey
deed	subdivision	rights
excluded	metes and bounds	variance
fixtures	nonconforming use	

1. All property other than real estate is known as _____.
2. Real estate consists of three things: land, improvements, and _____.
3. If a seller is taking a fixture, it must have been _____ from the purchase agreement.
4. Land is not considered a _____ because it cannot be sold quickly.
5. When articles of personal property are permanently attached to the improvements, they become _____.
6. Before a new building can be inhabited, a _____ is required.
7. Permission to vary from strict compliance with zoning requirements may be obtained in the form of a _____.
8. When a previously established use does not comply with the requirements of a new zoning ordinance, it may be allowed to continue as a _____.
9. Townships, sections, and meridians are used in the _____ form of legal description.
10. A legal description that uses compass degrees is _____.
11. The type of legal description used in most urban areas is _____.
12. A _____ may be used to separate two incompatible zoning uses.
13. Real estate and fixtures are transferred with a _____.
14. Personal property is transferred with a _____.
15. If the buyer is keeping the seller's personal property, it must be _____ in the purchase agreement.

UNIT 1 QUIZ

1. Section 4 contains how many acres?
 - A. 40
 - B. 160
 - C. 640
 - D. 43,560
2. A survey would do all of the following *EXCEPT*
 - A. establish boundaries.
 - B. create legal descriptions.
 - C. reveal an illegal use such as a commercial use in a residential zone.
 - D. find encroachments.
3. Real estate is bought and sold based on
 - A. street addresses.
 - B. property descriptions.
 - C. plat sizes only.
 - D. plats and parcels.
4. The definition of real estate includes
 - A. land.
 - B. improvements.
 - C. rights.
 - D. all of these.
5. Which of the following would ordinarily be considered personal property?
 - A. Drapery rods
 - B. Freestanding refrigerator
 - C. Built-in bookcase
 - D. Ceiling fan
6. All of the following are true about fixtures *EXCEPT*
 - A. fixtures typically start as personal property.
 - B. if the seller is going to keep a fixture, it must be excluded in the purchase agreement.
 - C. trade fixtures are treated the same as all other fixtures.
 - D. the intention, attachment, adaptation, and agreement are all used to define a fixture.
7. A developer bought a 100-acre parcel to subdivide into one-acre home sites. Which of the following methods of legal description would *BEST* achieve the developer's objectives?
 - A. Government survey
 - B. Monuments
 - C. Lot and block
 - D. Metes and bounds
8. Which of the following is generally *NOT* a use classification established by municipal zoning?
 - A. Residential
 - B. Mixed
 - C. Commercial
 - D. Architectural
9. The method of legal description using a grid of ranges and tiers is called
 - A. government survey.
 - B. metes and bounds.
 - C. informal reference.
 - D. street address.
10. After completing the plat map, the developer's next step is to
 - A. request a certificate of occupancy.
 - B. pull the building permits.
 - C. record the plat map.
 - D. sell the lots.
11. *Nonconforming use* is a term used in reference to property that
 - A. extends over lot lines.
 - B. is in need of deferred maintenance.
 - C. doesn't comply with current zoning requirements but may have been grandfathered in.
 - D. has not been recorded.

12. A light industrial plant has been operating in compliance with its zoning classification. After a zoning change to single-family residential use, the owners of the industrial plant are permitted to

- convert the building to condominiums.
- continue the present use as long as that use is not enlarged or expanded.
- build an addition to the plant.
- rebuild the plant if it is destroyed by natural causes.

13. At which level are zoning restrictions set?

- State
- Federal
- Local and state
- Local

14. Municipalities require submission of blueprints and construction plans before issuing a building permit in order to

- provide evidence of compliance with building codes and other local regulations.
- prevent unfair competition.
- maintain a list of active developers.
- control the influx of builders from surrounding areas.

15. A municipality has authorized the improvement of a particular property in a manner *NOT* authorized by the zoning ordinance. This is an example of a

- setback restriction.
- buffer zone.
- specific performance.
- variance.

16. Which method of legal description uses plat maps?

- Informal description by street address or rural route
- Lot and block
- Government survey
- Metes and bounds

17. A tenant installed shelving as a part of her business. At the conclusion of the lease, the tenant

- may remove the shelving only if she reimburses the landlord.
- must leave the shelving because it is the landlord's property.
- may remove the shelving and is not required to reimburse the landlord.
- must leave the shelving but may demand that the landlord reimburse her.

18. An area of land that separates two drastically different land use zones is a

- buffer zone.
- setback.
- nonconforming zone.
- variance.

19. The distance that a zoning ordinance requires between a property's boundaries and its improvements is a

- buffer zone.
- range.
- frontage.
- setback.

20. A method of property description using monuments, distances, and compass directions is the

- lot and block method.
- metes-and-bounds method.
- rectangular survey method.
- maps and plats method.

21. All of the following would be considered fixtures *EXCEPT*

- plumbing.
- wiring.
- a built-in oven.
- draperies.

22. The legal description of land that uses townships and sections is

- rectangular survey.
- metes and bounds.
- lot and block.
- township.

23. The principle of the doctrine of prior appropriation determines
 - A. which user's water rights have priority.
 - B. who owns the fixtures.
 - C. how personal property is distributed.
 - D. who has access to water rights.
24. Which of the following concepts would allow an owner to deviate from zoning regulations and run a day care center in her home in a neighborhood that is zoned residential?
 - A. Setback
 - B. Nonconforming use
 - C. Master plan
 - D. Special use
25. The document confirming that a new building has met all the minimum building standards and is the final regulatory step in the process of offering new construction for sale is called a
 - A. building permit.
 - B. certificate of zoning.
 - C. building code.
 - D. certificate of occupancy.
26. A buyer wants to use a residential property for a small business. Before closing, the buyer should
 - A. apply for a special use permit.
 - B. check the zoning to determine if the use is allowed.
 - C. call an attorney to request a variance.
 - D. apply for a sales tax license.
27. Which of the following *BEST* defines a plat?
 - A. A method of legal description using sections, townships, and ranges
 - B. An informal reference to properties in a neighborhood
 - C. A document used to record a subdivision of land
 - D. An instrument used by surveyors to locate property boundaries
28. Which of the following is *TRUE* about mineral rights?
 - A. They represent an interest in personal property.
 - B. They often are held by a third party.
 - C. They belong to the state.
 - D. Solid mineral rights are an interest in real estate, and liquid minerals are considered personal property.
29. A fixture is defined as
 - A. personal property attached to real property.
 - B. a lien of record.
 - C. chattel.
 - D. an encumbrance.
30. The seller and the buyer have negotiated an offer back and forth. In the original offer, the buyer asked for the seller's installed hot tub, which the seller had excluded from the marketing, MLS listing, and listing contract. In the final accepted offer, the hot tub is not mentioned. Who will own the hot tub at closing?
 - A. The seller, because the seller gave notice in the marketing and MLS listing and the listing broker was aware of the exclusion
 - B. The buyer, because the hot tub is automatically transferred with the property because it is personal property
 - C. The buyer; the seller would be in breach if the hot tub was removed
 - D. The seller, because it was excluded in the listing

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 1 Glossary Review Answer Key

1. personal property
2. rights
3. excluded
4. liquid asset
5. fixtures
6. certificate of occupancy
7. variance
8. nonconforming use
9. rectangular (government) survey
10. metes and bounds
11. lot, block, and subdivision
12. buffer zone
13. deed
14. bill of sale
15. included

Unit 1 Quiz Answer Key

1. **C** A section contains 640 acres.
2. **C** A survey would not find an illegal use.
3. **B** Real estate is bought and sold based on property descriptions (also called legal descriptions).
4. **D** Real estate includes land, improvements, and rights.
5. **B** Personal property is not permanently attached to real estate.
6. **C** Trade fixtures are personal property and transfer with a bill of sale.

7. **C** A subdivided (recorded) plat is the simplest way to divide a large parcel into smaller lots.
8. **D** The most common zoning classifications are residential, commercial, industrial/manufacturing, agricultural, and mixed use.
9. **A** The government survey (rectangular survey) established sections, townships, and ranges in the western United States.
10. **C** After receiving the plat map, the second step is to record the map. Then the lots can be sold and building permits pulled.
11. **C** When zoning in an area changes, a pre-existing improvement is allowed to continue as a nonconforming use.
12. **B** When a previously established use does not comply with the requirements of a new zoning ordinance, it may be allowed to continue only if the established use is not enlarged or expanded. Also, the use may not be resumed after it has been discontinued.
13. **D** Zoning laws are set at the local level.
14. **A** Building permits are required to ensure compliance with building codes and other local regulations.
15. **D** Permission to vary or deviate from a zoning restriction comes in the form of a variance. Typically, the type of variance in this case would be a conditional use or special-use permit.
16. **B** The lot and block (recorded plat) method of description uses plat maps to show the location and boundaries of individual lots in a land subdivision.
17. **C** Shelving is an example of a trade fixture. Trade fixtures are the tenant's personal property and may be removed by the tenant at the conclusion of the lease.

18. **A** When adjoining or nearby properties are zoned for drastically different uses, municipalities often create a buffer zone to separate them.

19. **D** The setback establishes the minimum distance between the boundaries and the improvements located on the property.

20. **B** The metes-and-bounds method of legal description uses distance and direction measurements to describe the boundaries of a property.

21. **D** Draperies are considered to be personal property because they are not attached.

22. **A** The rectangular survey uses townships and sections to describe land.

23. **A** The doctrine of prior appropriation determines which user's water rights have priority.

24. **D** Special use is the type of variance that allows for different uses of property.

25. **D** A certificate of occupancy is the final step to show that a new building meets minimum building standards.

26. **B** The buyer is expected to verify that the zoning of the property will meet the intended use.

27. **C** A plat is a map showing the location and boundaries in subdivision.

28. **B** In a sale, if the seller retains the mineral rights and sells them separately from the surface rights, the new buyer who now holds the subsurface mineral rights is called the third party.

29. **A** Fixtures are personal property that are attached to improvements.

30. **C** The hot tub is a fixture and cannot be removed without the seller being in breach because the seller did not specifically exclude it in the purchase agreement.

UNIT 2

Rights and Interests in Land

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **list** the four governmental rights in land;
- › **demonstrate** how to use a circle formula to complete math problems;
- › **differentiate** between freehold and leasehold estates and how they affect the transfer of title; and
- › **explain** how the different types of encumbrances affect the use of property.

KEY POINTS—UNIT 2

- An individual's property rights are subordinate to governmental rights. The government has the power to determine land use, to tax, and to regulate private property, and even to take private property for public use.
- Police power is the power that implements public controls for land use. It allows state and local governments to regulate how a property owner uses the property (e.g., through zoning laws or other land-use restrictions, such as environmental limitations), for the protection of the public health, safety, and general welfare.
- The power of eminent domain is the government's power to take private property for public use. Condemnation is the process that exercises this right. When private property is taken, the government must pay just compensation to the owner.
- General real property taxes are called ad valorem taxes because the amount of the tax is based on the value of the property. General real property taxes are levied to support the general operation and services of government and create a priority lien. Special assessments are levied for the cost of specific local improvements, and only those pieces of property that benefit from the improvement are taxed. A property owner may appeal a tax assessment to the assessment appeals board.
- If property is abandoned, or if a person dies intestate and without heirs, the property will escheat to the state (the memory aid is PETE).

- An estate is an interest in property. There are two types of estates: freehold estates, which are estates of ownership, and leasehold estates, which are estates of possession. Freehold estates have an indefinite duration, while a leasehold estate may be terminated. The three freehold estates are fee simple absolute, fee simple defeasible (also called a qualified fee because there are deed conditions), and a life estate.
- The fee simple absolute estate is the greatest, most complete form of ownership.
- Fee simple defeasible ownership is a “qualified” fee because this type of estate always has a condition that must be met. If the deed condition is broken, the estate may revert to the grantor or the grantor’s heirs.
- A life estate is an estate measured by someone’s lifetime. The person who will receive the property when the life estate ends holds a reversionary or remainder interest. If no remainderman is named, the estate reverts to the grantor or the grantor’s heirs.
- A leasehold is an estate of possession and is a nonownership interest in property. The lessor (landlord) accepts rent from the lessee (tenant) in exchange for possession. There are four types of leasehold estates: the estate for years, the estate from period to period, the estate at will, and the estate at sufferance.
- An encumbrance is any right, claim, or interest in property held by someone other than the property owner or the one who has a legal right of possession.
- An easement is a right of use. Easements may be appurtenant or in gross. Easements may be created by express agreement, necessity, or prescription. Once given, easements are not revocable.
- Deed restrictions are privately created limitations on land use. They apply to present and future owners. The most common examples are restrictive covenants imposed on all lots within a subdivision by the original developer.
- A lien is a financial encumbrance against property. Liens may be specific or general. Specific liens are liens against a specific property. The most common specific liens are government real property tax liens, mechanics’ liens (construction liens), and mortgages. Judgment liens and IRS liens are general liens against all of a person’s assets.
- An encroachment is an unauthorized use of someone else’s property, typically a physical object intruding onto neighboring property. Most encroachments are unintentional. A survey would reveal an encroachment.
- A license is similar to an easement; it grants permission to enter another’s property for a specific purpose. However, unlike an easement, a license does not create an interest in the property and is not an encumbrance against the title. Unlike an easement, a license can be revoked at any time.

I. GOVERNMENTAL RIGHTS IN LAND

A. Police power— _____ of land

1. Right to enact and enforce laws governing _____
2. Planning, _____, building codes
3. Determines how land can be _____

B. Eminent domain

1. Right to “take” _____ for public use
2. Process is called _____
3. An example of “involuntary alienation”
4. Compensation (value plus “damages”)

C. Taxation—property taxes and special assessments

1. Taxes are paid to the county where the property is located and are enforced by a foreclosable lien.
2. Property taxes have priority over _____.
3. Real property taxes are _____ (at value).
 - a. Assessed value \times tax rate = tax
 - b. County assessor determines assessed value, which is used only by the assessor
 - c. Appeals of assessments are first made to a _____
4. _____ are charges against specific properties that benefit from a public improvement.
 - a. Found by reading an _____
 - b. Often charged on a front footage (street front) basis
 - c. If not paid, can create a specific lien with the right of foreclosure

D. Escheat

1. Government’s reversionary right when a property is abandoned
2. Exercised when owner dies intestate (no will) and without heirs

E. Memory aid is PETE

1. Police power
2. Eminent domain
3. Txation
4. Escheat

II. ORS AND EES TABLE

Figure 2.1: ORs and EEs Table

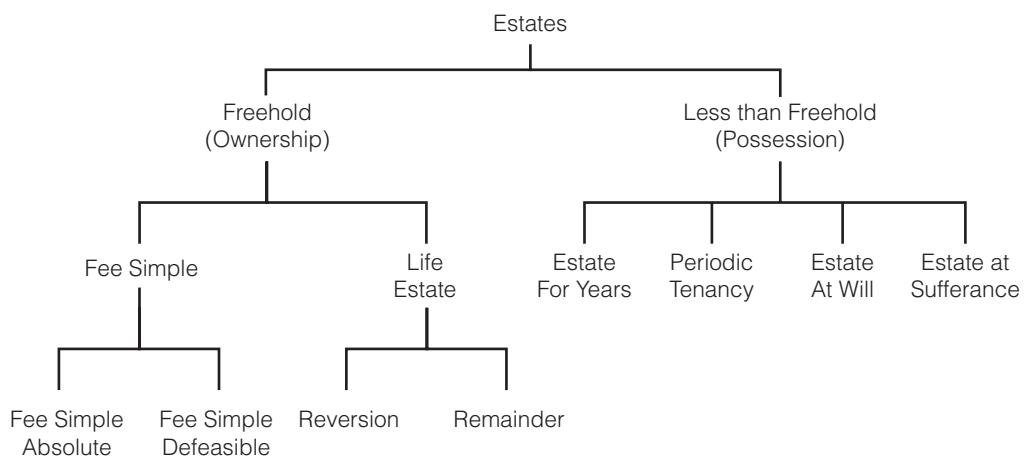
Document	ORs give	EEs receive
Deed	Grant _____	Grant _____
Lease	Less _____	Less _____
Mortgage	Mortgag _____ (borrower)	Mortgag _____ (lender)

III. ESTATES IN LAND

A. Estates

1. Definition
 - a. The _____ and kind of legal interest in, or right in, real property that allows or will allow possession
2. Two types
 - a. Freehold estates: _____ for an indefinite duration
 - b. Leasehold (nonfreehold): _____ for a fixed term

Figure 2.2: Types of Estates



B. Rights of ownership: freehold estates

■ Not a big house on a large lot

1. Fee simple absolute—complete “bundle of rights” (also known as fee estate or fee simple)
 - a. _____ control of property
 - b. Lasts _____
 - c. Transferable (alienation) and inheritable
2. Fee simple defeasible (defeated)—or _____
 - a. Created by a deed condition and is _____
 - b. If the _____ is violated, may revert to grantor or transfer as a remainder to others
 - c. Transferable and inheritable
3. Life estate
 - a. “Life tenant” (grantee) is the owner.
 - b. Life estate may be measured by life of grantee or by another life.
 - c. A life estate can also be based on the lifetime of a person other than the life tenant. A life estate per autre vie provides for inheritance by the life tenant only until the death of the third party.
 - d. Upon death of the life tenant, the estate returns to _____ and goes to the party named in the deed, either
 - i. the grantor— _____ or
 - ii. a third party— _____.
 - e. Life tenant may sell or lease the property, but upon the life tenant’s death (or the death of whomever is the measuring life), the buyers/lessees lose their interest.
 - f. A life estate is transferable and may or may not be inheritable.

C. Rights of possession: leasehold estates

1. Key points of leasehold estates

- a. The _____ is for a fixed term.
- b. A leasehold estate is also referred to as a _____ and a _____.
- c. The tenant/lessee holds a leasehold estate.
- d. The landlord/lessor holds a leased fee estate and has a reversionary interest.

- e. The purchaser of leased property obtains ownership “subject to” the lease.
- f. Amount of notice needed to terminate a residential leasehold is set by the lease or law.
 - i. Equal to the lease period, but not less than _____ for tenancies that are less than one year
 - ii. Minimum 60 days if tenant has resided in the dwelling for one year or more or if property is sold
- g. Upon termination, the right of possession reverts to the landlord.

2. Estate (tenancy) for years
 - a. _____ required
 - b. Death of landlord or tenant _____ terminate
 - c. Sale of property does not terminate
3. Periodic estate (tenancy)/estate from period to period
 - a. _____ for set period upon payment of rent
 - i. Example: month to month
 - ii. Terminated by advance notice of either party
4. Estate (tenancy) at will
 - a. Indefinite duration—tenant occupies at landlord’s discretion
 - i. No fixed term
 - b. Terminated by notice, death, or sale of the property
5. Estate (tenancy) at sufferance
 - a. Holdover after legal tenancy expires (lowest estate)
 - b. Owner may evict tenant or accept rent
 - i. If rent is accepted from tenant at sufferance, estate at sufferance becomes a periodic estate

IV. ENCUMBRANCES

A. Key points

1. An encumbrance is any claim, right, or interest held by a party who is _____ of the property; a nonpossessory interest.
2. An encumbrance is an imperfection that typically does not add to the value, but may impact it.

3. An encumbrance may be created by the property owner and can cloud the title.
4. _____ if they have any concerns about an encumbrance, such as an easement, lien, deed restriction, or encroachment.

B. Definition of an easement

1. The _____ of another for a specific purpose
2. Attaches to and run with the land—transfers with the deed

C. Types of easements

1. Appurtenant easement has a _____ tenement and a _____ tenement.
 - a. _____
 - b. Does not increase dominant estate's size, but may increase its value
 - i. Example: Driveway _____ for ingress and egress
 - c. Could grant permanent access to a neighbor's property
2. Easement _____ has no dominant property, only servient property.
 - a. Commercial easement held by company, government, or person
 - b. Example: _____ easement
3. Easement _____ is granted by the courts to a _____ to prevent creation of landlocked property; it is only granted if there is no other access. This easement is only available to private owners and not public utilities, railroads, or governments.
4. Easements may be created by express agreement, prescription, or necessity.
 - a. Express written agreement—easement is a real property interest and is therefore transferred by a deed
 - b. Not _____ once given
 - c. May or may not be paid for
5. Easements can be terminated three ways.
 - a. Merger—holder of dominant interest acquires the servient property or vice versa
 - b. Release—holder of dominant interest releases rights to servient owner (via quitclaim deed)
 - i. Unless the easement is released, _____ with the _____
 - c. Abandonment—not automatic, it must be proven in court

D. Deed restrictions (private controls on real property)

1. Deed restrictions are _____ created controls on land use that protect property values and the interests of property owners.
 - a. _____ —An agreement to do or not to do a particular thing. In a deed, the penalty for non-compliance is typically monetary damages.
 - b. Condition—Upon the happening or lack of happening of a specified event, title to property could revert to the grantor in a deed.
2. The grantor/owner (usually a developer) imposes limitations on land use for a subdivision.
 - a. Examples: No RVs allowed in driveways, no fences in front yard, houses must be a certain square footage, brick siding required
3. Deed restrictions are binding on all present and future owners, and they run with the land (appurtenant).
4. Owners may be subject to injunction or monetary damages for violating covenants.
5. Deed restrictions must be for _____ (e.g., cannot restrict property owners based on race or other protected groups).
6. The strictest rule, zoning, or deed restriction will prevail if there are multiple limitations.

E. Liens

1. A _____ is a type of encumbrance to secure payment of a debt.
 - a. If creditors are not paid, it allows them to sell the property to recover money owed.
2. Lien classifications are voluntary versus involuntary and specific versus general.
3. A lien _____ releases an unrecorded lien.
4. A recording of a _____ releases a recorded lien.

F. Lien types

1. Specific liens—attach only to specific real or personal property
 - a. Government lien for property taxes or special assessments (involuntary)
 - i. Has _____ over all other liens
 - b. Mechanic's or construction lien (involuntary)—for labor, skill materials, or equipment provided for the improvement of real estate
 - i. This lien can be placed by contractors, workers, or suppliers of materials.
 - ii. Lien priority dates back to when work was begun or materials delivered.

iii. An owner of real property can protect against a mechanic's lien for unauthorized work by filing a _____.

2. Mortgage liens or deeds of trust (voluntary)

- Voluntary pledge of lands to secure _____

3. General liens—attach to _____, including personal and real property

- Judgment lien (involuntary)
 - Court-ordered claim against an individual and all that the individual owns
 - Examples: unpaid hospital bills, child support

4. IRS or state liens for income taxes (involuntary)

G. Homestead rights

- A homestead exemption is created by state statute to _____ against creditors.
 - Protects against forced sale on judgments and debits for personal loans and credit cards
 - Typically does not protect against mortgage liens, property tax liens, or mechanics' liens that are attached to the real property
- The amount of the homestead exemption is the greater of the following:
 - The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
 - Three hundred thousand dollars (\$300,000).
 - The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

H. Encroachments

- An encroachment is the unauthorized use of another person's land or a physical object intruding onto neighboring property.
 - Examples: part of a building or fence exceeds the property line
- Any buyer who finds an encroachment _____ should consult an attorney.
- A survey will reveal encroachments.

V. LICENSES**A. Key point**

1. A license is a _____, nonexclusive permission that grants privilege to use property.
 - a. Example: A property owner grants his neighbor the right to fish in his farm pond but decides after a month he no longer wants him on the property. The owner can revoke the neighbor's right to fish.

UNIT 2 GLOSSARY REVIEW

appurtenant	fee simple absolute	local level
definite duration	government lien	mechanic's lien
easement	indefinite duration	police power
eminent domain	leasehold estate	revocable
encroachment	lien	zoning ordinances
escheat		

1. List two ways the government can acquire privately held land:

— _____
— _____

2. Public control of land use by the government is known as _____.

3. A right of use or enjoyment that one person has in the lands of another for a specific purpose is an _____.

4. A tenant's right to possess real estate for the term of a lease is a _____.

5. A tree limb that overhangs into a neighbor's yard is an example of an _____.

6. An easement is not _____, but a license is.

7. A claim that one person has against the land of another to secure payment of a debt is a _____.

8. A person who has not been paid for work performed on real property may record a _____.

9. A party wall or a shared driveway is an example of an easement _____.

10. The right of an owner to occupy a parcel of real estate forever is a _____.

11. The type of lien that takes priority over all others is the _____ for property taxes.

12. As part of their right to govern land use, local municipalities enact and enforce _____.

13. A freehold estate is an estate of ownership with a(n) _____.

14. Leasehold estates are estates of possession with a(n) _____.

15. Zoning laws are set at a _____.

UNIT 2 QUIZ

1. Real property taxes are computed based on the property's
 - A. subjective value.
 - B. market value.
 - C. assessed value.
 - D. income value.
2. The process by which the government exercises its power to take private lands for public use is
 - A. condemnation.
 - B. escheat.
 - C. foreclosure.
 - D. eminent domain.
3. All of the following are governmental powers *EXCEPT*
 - A. deed restrictions.
 - B. taxation.
 - C. zoning.
 - D. escheat.
4. Under police power, building codes would determine all of the following *EXCEPT*
 - A. acceptable land uses.
 - B. types of plumbing and electrical materials allowed.
 - C. height and structure requirements.
 - D. methods of construction to be used.
5. The term *estate* refers to
 - A. the amount of property owned by an individual.
 - B. the rights held by someone who has a possessory interest in real estate.
 - C. a claim against or interest in land held by someone other than the owner of the property.
 - D. an exercise of police power.
6. When an individual or entity holds a claim against another's property, it is
 - A. an estate.
 - B. a life tenancy.
 - C. a lien.
 - D. a license.
7. All of the following are considered to be real property rights *EXCEPT*
 - A. land rights.
 - B. governmental rights.
 - C. deed rights.
 - D. ownership rights.
8. Which of the following would be used by a purchaser to reveal encroachments?
 - A. Standard title insurance
 - B. Abstract of title
 - C. Survey
 - D. Attorney's title opinion
9. Which of the following liens has first priority?
 - A. Mechanic's lien
 - B. First mortgage
 - C. Property taxes
 - D. Court judgment
10. The grantor of a life estate may retain
 - A. a leasehold estate.
 - B. a qualified fee estate.
 - C. rights of remainder.
 - D. a reversionary interest.
11. If Ann grants a life estate to Ben and specifies that title will be transferred to Carl upon the death of Ben, which of the following is *FALSE*?
 - A. Ben is the life tenant.
 - B. Carl has a reversionary interest.
 - C. Ben owns the property.
 - D. Carl is the remainderman.
12. The holder of a fee estate
 - A. has rights of alienation.
 - B. can change deed restrictions.
 - C. may terminate a servient tenement.
 - D. must hold a reversionary interest.
13. A married couple has been granted the right to occupy and use a 10-acre tract of land forever. Which of the following does the couple hold?
 - A. Fee simple estate
 - B. Estate for years
 - C. Life estate
 - D. Leasehold estate

14. In most life estates, the life tenant may do all of the following *EXCEPT*

- will the property.
- sell the property.
- lease the property.
- improve the property.

15. All of the following could be encumbrances on real estate *EXCEPT*

- a lien.
- an easement.
- a restrictive covenant.
- a fixture.

16. An estate that lasts only so long as a specified condition is met is known as a

- life estate.
- qualified fee.
- fee simple absolute.
- deed restriction.

17. The right of the government to establish zoning and land use laws is an exercise of which of the following?

- Police power
- Escheat
- Government survey
- Eminent domain

18. The grantor of a qualified fee has set the requirement that the property "must be used only as a school"; this requirement is known as a

- qualified condition.
- remainder interest.
- reversionary interest.
- deed condition.

19. A leasehold estate with a definite expiration date that does *NOT* require notice by either party is

- an estate at will.
- a fee simple absolute.
- an estate at sufferance.
- an estate for years.

20. Which governmental right is exercised when the state acquires private property through condemnation and makes a payment of just compensation?

- Escheat
- Police power
- Taxing power
- Eminent domain

21. What is the difference between a freehold and a leasehold estate?

- Freeholds are estates of possession and leaseholds are estates of ownership
- Freeholds have an indefinite duration but leaseholds can terminate
- Freeholds do not need to be in writing but leaseholds do
- Freeholds must be fee simple but leaseholds can be a life estate

22. A holder of a life estate has all of the following interests *EXCEPT*

- title.
- ownership.
- possession.
- remainder.

23. An irrevocable right to use the lands of another is called

- escheat.
- a license.
- an encroachment.
- an easement.

24. A holder of a freehold estate has rights of

- escheat.
- illegal use.
- ownership.
- domain.

25. Which is *NOT* an estate of ownership?

- Estate for years
- Life tenancy
- Fee simple
- Qualified fee

26. All of the following would be considered to have an interest in land *EXCEPT*

- a farmer who is leasing 20 acres.
- a holder of an easement.
- a hunter who has been given permission to hunt in a field.
- a lender holding a mortgage lien.

27. Which of the following estates usually does *NOT* terminate on the death of the holder of the estate?

- Life estate
- Estate for years
- Estate at will
- Estate at sufferance

28. The property Sam bought 30 years ago had an appurtenant easement for access. Twenty years ago the county built a new road and Sam has not used the easement since that time. When Sam sells the property, the easement

- A. will automatically return to the servient property owner.
- B. will no longer run with the land due to the statute of limitations.
- C. must be renewed by rerecording it with the county.
- D. remains in place and will transfer with the property.

29. Protection on a primary home against certain creditors is known as

- A. specific lien rights.
- B. homestead rights.
- C. general lien rights.
- D. deed restrictions.

30. Revocable, nonexclusive permission to use property is called

- A. an encroachment.
- B. a license.
- C. an easement.
- D. a restriction.

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 2 Glossary Review Answer Key

1. escheat, eminent domain
2. police power
3. easement
4. leasehold estate
5. encroachment
6. revocable
7. lien
8. mechanic's lien
9. appurtenant
10. fee simple absolute
11. government lien
12. zoning ordinances
13. indefinite duration
14. definite duration
15. local level

Unit 2 Quiz Answer Key

1. **C** Assessed value \times tax rate = property tax.
2. **A** The process is condemnation; the power is eminent domain.
3. **A** Deed restrictions are private restrictions on the use or sale of a property.
4. **A** Building codes determine the types of plumbing and electrical materials allowed. The height and structure requirements and methods of construction to be used are also determined by building codes. Zoning codes determine acceptable land uses.
5. **B** An estate in land refers to the collection or bundle of rights held by someone who has a possessory interest in a piece of real estate
6. **C** A lien secures payment of indebtedness.
7. **C** Real property rights are those of land, government, and ownership, not deed rights.
8. **C** A survey would be used to discover zoning setback violations or encroachments.
9. **C** Government liens for property taxes and special assessments always have top priority.
10. **D** If the grantor of a life estate retains reversionary rights, ownership in fee simple reverts to the grantor at the end of the life estate.
11. **B** A reversionary interest could only be held by Ann, the grantor.
12. **A** A fee estate gives the owner the right to sell, will, or give the property away, which is known as alienation.
13. **A** The right to occupy and use land forever is a fee simple estate.
14. **A** Most life estates terminate upon the death of the life tenant, and therefore cannot be willed. (One exception: a life estate pur autre vie, in which the life of someone other than the life tenant is used as the measuring life.)
15. **D** A fixture is real estate. Liens, easements, and restrictive covenants are encumbrances.
16. **B** A qualified fee estate, also sometimes referred to as a defeasible estate, is a form of ownership that can be lost by violating a condition in the deed granting the ownership interest.
17. **A** Police power is the government's right to enact and enforce laws to protect the health, safety, morals, and general welfare of the public (including land use laws).

18. **D** Deed conditions are used to create the requirements of qualified fee estates.

19. **D** An estate for years has a specific termination date.

20. **D** Condemnation is the process by which the government exercises its power of eminent domain.

21. **B** Freehold estates are of indefinite duration. Leaseholds will terminate.

22. **D** A life tenant owns the property; therefore, the life tenant has title and possession. The remainder estate belongs to the party who will obtain title upon death of the measuring life.

23. **D** Easements are nonrevocable rights of use to another's property.

24. **C** Freehold estates are estates of ownership.

25. **A** An estate for years is a right of possession, not ownership. Life tenancy, like all other freehold estates, is an estate of ownership.

26. **C** Granting permission to use one's land creates a license, which is not an interest in land.

27. **B** An estate for years is a contract and terminates on the date specified in the lease, not upon death of the lessor or lessee.

28. **D** Easements can be terminated by release, merger, or abandonment. If an easement is abandoned and the property owner wants to have it returned, typically the servient property must prove abandonment in court.

29. **B** Homestead rights protect a primary home from foreclosure by certain lienholders.

30. **B** A license can be revoked, and it typically gives nonexclusive permission to use a property.

UNIT 3

Transfer of Property, Recording, Title Insurance, and Taxation

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **describe** the various forms of ownership in real estate and **explain** how they differ;
- › **list** the types of deeds and **explain** how they convey ownership;
- › **describe** how property is conveyed after death and the circumstances that may provide for the involuntary transfer of title;
- › **summarize** how the public recording system works and why it is important for real estate;
- › **explain** how title insurance and a suit to quiet title are used to provide marketable title; and
- › **explain** the tax implications inherent in real property investments.

KEY POINTS—UNIT 3

- When title to real property is held by one person or entity, it is called ownership in severalty. Property may be owned solely by one individual or by a single entity (a corporation, partnership, limited liability company, or real estate investment trust).
- Concurrent ownership or co-ownership exists when two or more people simultaneously share ownership of one piece of property. The two most common forms of co-ownership are tenancy in common and joint tenancy.
- Unless an agreement exists to the contrary, co-ownership is presumed to be a tenancy in common. With a tenancy in common, there is an equal right of possession, but each tenant may hold unequal shares of ownership and there is no right of survivorship.
- With a joint tenancy, each tenant must have an equal ownership share and equal rights of possession. Joint tenants also have a right of survivorship. This means that when a joint tenant dies, his share of ownership in the property automatically passes to the surviving joint tenant(s).

- Common interest communities include condominiums, town houses, cooperatives, time-shares, and planned communities. Sales of these types of properties are regulated under California's subdivided lands law.
- The owner of a condominium unit owns the unit, plus an undivided interest in the common elements as a tenant in common with the other unit owners.
- A cooperative, by comparison, is a building owned by a corporation. Each resident owns shares of stock in the corporation and has a proprietary lease in the individual unit.
- A deed is the document used to transfer real property. A valid deed must identify the parties, have a competent grantor, contain words of conveyance, contain a legal description of the property, state the consideration that was given, be properly executed, and be delivered and accepted. The statute of frauds requires that the deed be in writing.
- The three main types of deeds used are the grant deed, gift deed, and quitclaim deed.
- A grant deed involves certain implied (unwritten) warranties. This deed provides the greatest protection for a grantee (typically the buyer who is receiving title to real property).
- A quitclaim deed conveys no warranties of any kind. It simply conveys whatever interest the grantor has when the deed is delivered. A quitclaim deed may be used as a “problem solver” to clear clouds on the title.
- When a person dies, the person’s property may be transferred by the terms of a will or according to the law of intestate succession.
- Property may also be acquired by adverse possession. The adverse possession must be open, continuous, exclusive, actual, and notorious (hostile) for a period of five years.
- California laws determine how documents are filed for recording. The recording system provides a way of determining who owns a particular piece of real property. Once a document has been recorded, everyone has constructive notice or legal notice of its contents, by operation of law. Recorded documents are indexed alphabetically according to the names of the grantor and grantee.
- In California, the recording system works as a race/notice system: the first to record a deed wins, if that person has no notice of prior conveyances.
- Marketable title is title that is reasonably free from risk of litigation over possible defects or undisclosed encumbrances.
- The most common way for a seller to demonstrate that the title will convey is to pay for and provide title insurance for the buyer.
- In a title insurance policy, the title insurance company agrees to reimburse the policyholder for losses caused by defects in the title that were not discovered during title search and also agrees to handle the legal defense of claims based on covered defects. A title policy may insure the owner (the buyer) and/or lender. The purchase agreement and tradition determine who pays for the title insurance policy.
- To clear away a cloud and establish marketable title, a property owner may have to file a suit to quiet title.

I. FORMS OF OWNERSHIP

A. Sole ownership/estate in severalty

1. Ownership by _____ is ownership (estate) in severalty.
2. Upon death, the property goes to the _____.
3. A legal entity can own in severalty.
 - a. Two or more people or firms joining together as an entity to own real estate is syndication.
 - i. Examples: corporation, partnership, trust, real estate investment trust (REIT)
 - b. In a general partnership, all partners have equal say and liability.
 - c. In a limited partnership, the limited partners' liability is _____ of ownership.
 - d. The sale of interests may require a securities license.

B. Concurrent (multiple) ownership

1. Definition
 - a. In concurrent (multiple) ownership, two or more persons share ownership with _____. Because their shares or interests are _____ but undivided, they have equal rights of possession.
 - b. In this type of ownership, no co-owner has a right to any specific part of the property.
 - c. Buyers should obtain an _____ to determine the most appropriate form of co-ownership.
2. Tenancy in common: co-ownership _____ to other owners
 - a. The default in California for unmarried couples is tenancy in common.
 - i. With tenancy in common, _____
 - b. There is no survivorship; interests go to heirs or devisees _____.
 - i. Subject to probate
 - ii. Each _____ for the property taxes as an individual or a group
 - c. A partition lawsuit can divide property among co-owners who cannot agree on actions.

3. Joint tenancy: co-ownership _____ to other owners
 - a. Must be specified in deed— _____
 - b. Upon death, interests go to _____ without going through probate
 - i. _____ a will
 - ii. Death certificate and joint tenancy affidavit must be recorded for effective title
 - c. Must have four unities
 - i. Possession, interest, title, and time (memory aid is _____)
4. Community property: ownership by married couples or couples registered under the domestic partnership law
 - a. Spouses and registered partners are equal owners regarding community property.
 - i. Community property is all property that is acquired after marriage or registration, unless it is income or profit from separate property or other property identified as separate by law.
 - ii. Separate property is that which is acquired before marriage or registration. It can also be acquired through a gift or inheritance, or if there is a separate agreement.
 - iii. Income from separate property remains separate unless finances are commingled.
 - b. Community property is presumed unless stated to the contrary in the deed.
 - c. Upon the death of one spouse, the surviving spouse retains his own half interest in community property, with the other half going to devisees if there is a will or to the surviving spouse if there is no will.
 - d. If specifically stated in the deed, title can be taken as community property with right of survivorship. This enables the surviving spouse to obtain marketable and insurable title without delay and without probate.
 - e. An individual spouse or registered partner can enter into employment contracts (listing), but both spouses' signatures are required on a sales contract and deed.

C. Common interest community ownership

1. Key points
 - a. Condominiums, cooperatives, and other forms of common interest ownership are regulated under the subdivided lands law administered by the Department of Real Estate.
 - b. Generally, a common interest community has the authority to levy _____ on its owners for the maintenance of common elements; typically through homeowners association (HOA) dues.
 - c. Sellers have disclosure requirements to buyers related to the sale of common interest property.

2. Condominium

- a. Real estate, portions of which are designated for separate ownership (units) and the remainder of which are designated for common ownership and use (_____)
- b. May be any type or use of real estate (i.e., residential, commercial)
- c. Created by recording a _____, which describes the legal and physical structure along with any restrictions on use
 - i. Will describe any party walls—shared walls that separate ownership interests, such as condominium units
 - ii. Specification of common and limited common elements
 - Common elements are those areas used by all owners, such as a swimming pool, tennis court, hallways, and elevators.
 - Common elements are owned by all unit owners as _____.
 - A “limited common element” is any common element reserved for the use of one or more unit(s) to the exclusion of other units (e.g., assigned parking spaces, storage units, and balconies).
- d. Each unit owner is a _____ of the homeowners association, a _____ with the following functions:
 - i. Manages common elements and pays any taxes the HOA may owe
 - ii. Adopts rules, regulations, and budgets
 - iii. Adopts and amends bylaws
 - iv. Imposes and collects assessments (association fees), which creates a foreclosable lien on the unit
 - Unpaid dues create a specific lien, which can be foreclosed on by the HOA.
 - v. Holds annual meeting
 - vi. Maintains insurance on common elements (contents of units are not covered)
- e. Separate title and taxation
 - i. Deed transfers fee simple interest in unit plus undivided interest in common elements; all unit owners share ownership of common elements as tenants in common
 - ii. Unit together with common element percentage is a separate parcel
 - iii. Taxed as one parcel; HOA may also have tax liabilities

- f. Owners _____ their individual units independently
- g. Seller is required to give buyer full disclosure, including the declaration, bylaws, financial reports, and so on

3. Cooperative

- a. A cooperative is owned by a corporation, which in turn allows the owners (stockholders) to have occupancy.
- b. The cooperative corporation (tenants association) owns the real estate.
- c. The buyer receives membership in the association, shares of stock, and a proprietary lease.
- i. _____
- d. The stockholder/tenant pays assessments and association fees.

4. Time-share

- a. A purchaser buys interest in real estate and receives the right to use the property for certain periods of time.
- b. Purchasers may own the land, or the developer may own the land and contract for its use.
- c. Purchasers of units own as tenants in common with other purchasers.
- d. This type of ownership is most common for _____.
- e. The sale of a time-share or condominium with a mandatory rental pool agreement may require a securities license.
- f. Buyers have a seven-day right of rescission period after purchasing a time-share.

II. CONVEYING OWNERSHIP

A. Act of conveying real estate ownership (title):

- 1. A _____ is from individuals, using a deed.
- 2. A _____ is from the government to individuals, using a land patent.
- 3. A _____ is from individuals to the government.

B. Key points and characteristics of deeds

- 1. The purpose of a deed is the voluntary transfer of an interest in property between the giver/grantor and the receiver/grantee.
- 2. A seller of real property will always be required to provide a _____.

3. Every deed conveys whatever interest is held by the grantor, unless it specifically states that it is conveying a lesser interest.
4. The major difference between types of deeds lies in the extent of the promises given by the grantor to the grantee.
5. Deeds do not _____.
6. Deeds do not have to be recorded for title to transfer; title passes upon acceptance of the grantee.

C. Essential elements of a valid deed

1. Competent grantor
 - a. _____
 - b. Seller is _____ and buyer is _____
2. Execution by the grantor(s)
 - a. Deed must be signed by all owners to convey entire property
 3. Identifiable grantee (need not be competent)
 4. Delivery to and acceptance by the grantee(s)
 - a. Title passes upon _____
 5. Description of the land (property description)
 - a. Property descriptions _____—appurtenances are presumed to transfer with the land unless specifically excluded and are not mentioned in the legal description
 6. Must be in writing
 7. Words of conveyance (granting clause)
 - a. States that seller is making a grant, which conveys the warranties of the deed
 - i. For example: Creates the difference between a grant deed and a quitclaim deed

Figure 3.1: Seven Essential Elements of a Deed

1. Competent grantor
2. Execution by grantor
3. Identifiable grantee
4. Delivery and acceptance (by grantee)
5. Description of the land
6. Be in writing
7. Words of conveyance

D. Effective deed

1. For a valid deed to be effective and transfer title, it must be
 - a. _____, and
 - b. _____.
2. Note: The following are not essential for a valid or effective deed: valuable consideration, date, grantee signature, legal description, habendum clause ("to have and to hold"), or recording.

E. Types of deeds

Figure 3.2: Types of Deeds

Voluntary Deeds	Involuntary Deeds
Grant deed	Sheriff's deed
Quitclaim deed	Tax deed
Gift deed	Trustee's deed
Warranty deed	

1. Grant deed (most commonly used in California)
 - a. Implied warranties
 - i. _____ has not previously conveyed title to another (does not warrant ownership of property).
 - ii. Grantor has disclosed all _____.
 - b. Conveys after-acquired title
2. Quitclaim deed
 - a. Best for the _____
 - b. No covenants or warranties—"_____"
 - c. Used to clear clouds on title (problem-solver)
 - d. Used when grantor wants no future claims or _____
3. Other deeds
 - a. A trustee's deed/sheriff's deed transfers title at the end of a foreclosure proceeding or statutory redemption period.
 - b. A reconveyance deed is used to restore the title to the trustor when they pay off a loan secured by a deed of trust.
 - c. A warranty deed has expressed (written) warranties. It is used in some states instead of title insurance.

III. CONVEYANCE AFTER DEATH

A. Probate

1. The California Probate Code addresses all matters and proceedings pertaining to the administration of estates, guardianships of minors, and conservatorships to provide care for another adult.
2. Probate includes distributing a deceased person's assets.
3. _____ in order for the beneficiary (person named in a will) or heir (where there is no will) to receive real or personal property.

B. Transfer by will (testate)

1. Devise is the act of transferring a deceased person's interest in real estate to another.
2. Bequest is the act of transferring a deceased person's interest in personal property to another.
3. There are three types of wills.
 - a. A _____ is one that is entirely in the testator's own handwriting.
 - b. A nuncupative will is an oral will made in contemplation of death.
 - c. A witnessed will is witnessed by two disinterested third parties.

C. Intestate succession (no will)

1. The heirs/descendants are determined by California's law of intestate succession.

IV. OTHER WAYS OF ACQUIRING RIGHTS (INVOLUNTARY ALIENATION)

A. Key points

1. The law presumes owners of real property will _____ their property and protect their interest by giving a notice to cease and desist to anyone who is trespassing.
2. Owners who do not inspect their property, even if they live out of town, may lose their rights of ownership if another party possesses or uses the property for a statutory period of time.
 - a. Title obtained through adverse possession or an easement acquired by prescription is not voluntarily granted by the property owner but is granted through a court procedure.
3. Owners who are aware of possession and use by another and have given the possessing/using party _____ or license to possess or use do not fall under this law.
 - a. If all parties know and agree to the possession or use, it cannot be adverse possession or a prescriptive easement because notorious and hostile implies that it is without permission.

B. Adverse possession

1. Ownership recognized by the courts after fulfilling _____ essential elements
 - a. _____
 - b. Hostile to the true owner's title
 - c. Under claim of right or color of title
 - d. Continuous and uninterrupted for a period of five years
 - e. Payment of all real property taxes for a period of five years

C. Easement by prescription/prescriptive easement

1. An easement recognized by the courts after open, notorious, and hostile _____ of another's land for a continuous and uninterrupted period of five years and under claim of right or color of title (no requirement to pay property taxes).
2. An easement by prescription terminates after _____ for five years.

V. PUBLIC RECORDING SYSTEM**A. Key points**

1. Policies and procedures that regulate recording are established by _____. The law determines who is responsible for organizing and maintaining recorded documents.
2. Recording _____ of the document.

B. Recording process used at the county recorder's office

1. Note the date and time the document is filed.
2. Assign a recording number.
3. Copy the document into public record (photocopy or digital image).
4. List the document in grantor and grantee indexes.
5. Return the original document to the indicated party.

C. System allows users to post claims

1. Gives constructive or legal notice, which is implied by law
 - a. Actual notice is that which is express knowledge of a fact.

2. Establishes _____ of interests—"first in time, first in right"
 - a. A deed does not have to be recorded to be valid.
 - b. A grantee who does not record a deed risks having another party claim title to the property.
3. Creates priority (position) of the documents based on date and time of recordation

D. System allows users to search claims

1. Users can inspect the property for visible claims and _____ notice, such as parties in possession or encroachments.
2. Users can inspect public records for _____, such as liens and persons on the title.
3. The buyer has a due diligence to inspect (or have someone inspect) both the property (e.g., home inspection) and the public records (e.g., title search).

E. Requirements for recording

1. Deeds, mortgages and trust deeds, contracts for deed, easements, and long-term leases are the types of documents that are usually recorded.
2. Recorded documents should be executed (signed) by the party conveying interest.
 - a. California law requires most documents to be acknowledged (notarized) to be recorded. This confirms that the transfer is voluntary and not under duress, and verifies the identity of the person who signs the document.
 - b. A deed that is not recorded lacks _____ notice of ownership.
3. Recording fees and transfer taxes are determined by local laws.
 - a. California law established the property transfer charge (called documentary transfer tax) of \$0.55 per \$500 (or fraction thereof). It is paid on the total purchase price less any existing loans that are assumed.
 - b. The documentary transfer tax is paid when the deed is recorded. It can be paid by either the seller or the buyer, and can be negotiated.
 - c. Sample documentary transfer tax problem: A house is sold for \$600,000. An existing first trust deed of \$500,000 is assumed by the purchaser. How much documentary transfer tax will be charged?

Purchase price = _____
 – Assumed loans = _____
 = Taxable amount = _____
 ÷ Unit of tax (\$500) = _____
 × Tax rate = _____
 Total tax owed = _____

F. Subordination

1. Subordination is a clause in a mortgage/deed of trust or agreement in which an existing lender permits the lender's right of priority to take a subordinate (lower) position to future encumbrances against the property.

VI. HOW MARKETABLE TITLE IS DETERMINED**A. Key points**

1. Marketable (or merchantable) title is ownership free from reasonable doubt. The buyer's goal is to obtain marketable title.
2. To know what makes valid documents, brokers and salespeople need to understand
 - a. what makes title marketable,
 - b. how ownership issues may impact title transfer,
 - c. the essential elements of contracts and deeds, and
 - d. who is required to sign each document in the transaction.

B. Title search

1. An examiner reviews public records pertaining to a property.
 - a. The examiner may be an attorney or a trained title examiner.
2. The search may be from the present to the original source of title.
 - a. The original source can be a land grant or a U.S. patent.
3. This process is used to establish the _____.
 - a. The chain of title is a _____ of successive ownership documents linked together.
 - b. The examiner seeks an unbroken chain.
4. If errors or missing documents are found in a title search (a broken chain), then the title is clouded.
 - a. The seller will need to clear the title to convey the property.
 - b. Small issues such as a nonrecorded name change may be corrected with a correction or quitclaim deed.
 - c. Larger issues may require a suit to quiet title.

C. Abstract of title

1. An abstract of title is a _____ of all recorded documents affecting title to a given parcel of land. It is created through a title search.
2. This method is used in some other states, but title insurance is preferred in California.

D. Certificate of title and guarantee of title**E. Title insurance**

1. Best method for insuring marketable title
2. Title search performed by examiner
3. Title report and commitment
 - a. The title report states the _____ and is a commitment to insure.
 - i. It shows the _____ of recorded encumbrances.
 - ii. It does not show the _____ of past owners or encumbrances.
 - b. The commitment lists policy exceptions, which are defects and encumbrances that have been discovered or may exist and are _____ the policy.
 - i. _____: items never covered; buyer responsible for checking
 - ii. _____: clouds specific to the property discovered by examiner
 - c. The buyer may offer objections before closing.

VII. TITLE INSURANCE POLICIES**A. Standard coverage policy**

■ _____—California Land Title Association

1. A standard coverage policy protects against all problems _____.
 - a. Excludes exceptions found before closing and listed in the title report
2. It covers matters of record that are not listed as exceptions, including the following:
 - a. Forgery and fraud
 - b. Improper delivery
 - c. Lack of capacity of a grantor

B. Extended coverage policy

■ _____—American Land Title Association

1. An extended coverage policy protects against the same types of problems as a standard coverage policy but has additional protection. It is typically required by lenders but is also available to owners.
 - a. In addition to the problems covered by a standard policy, it covers the following:
 - i. Unrecorded tax, assessment, and mechanics' liens and easements
 - ii. Water rights and mining claims
 - iii. Items that are not a matter of public record but would be revealed by a physical inspection (e.g., rights of parties in possession, encumbrances, encroachments, adverse possession, etc.)

C. Types of policies

1. New buyers will receive an _____, which protects owners/buyers and their heirs while they have an interest.
 - a. The coverage cost is based on the sale price of the property.
 - b. It is paid for by the seller or the buyer as per tradition and/or the purchase agreement.
 - c. The coverage continues until the property changes title.
2. A _____ protects the mortgagee/lender.
 - a. The coverage is based on the loan amount.
 - b. It is often paid for by the buyer, but the seller could also pay for it.
 - c. The coverage diminishes with each loan payment and ceases to exist when the loan is satisfied.

D. Policy premium

1. Unlike most insurance, the premium for title insurance is _____ when the policy is issued at closing.

VIII. SUIT TO QUIET TITLE**A. Key points**

1. A suit to quiet title is a court hearing to determine ownership, recognize other valid claims, and "quiet" invalid claims.
 - a. It is used to clear clouded title.
 - b. It establishes ownership under adverse possession.

B. Notice sent to interested parties

1. A “ _____ ” is filed.
 - a. This is a recorded notice of a pending lawsuit affecting title to a property.
 2. All parties with a claim must present evidence of the claim in court.

C. Court hears and judges claims

1. The process recognizes valid claims and “quiets” invalid claims.
2. Once the court order is recorded, the cloud on title is _____.

IX. TAXATION AND HOMEOWNERSHIP

- Real estate brokers should not advise on tax advantages or disadvantages but should recommend that buyers and sellers seek the advice of a qualified tax consultant.

A. Deductions on a first or second residence

1. Property taxes (ad valorem taxes)
 - a. This deduction is limited to \$10,000 for married couples filing jointly, and \$5,000 for individuals or married taxpayers filing separately.
2. Mortgage interest, discount points, and loan origination fees (maximum loan amount is \$750,000 for married couples filing jointly; \$375,000 for individuals or married couples filing separately)
3. Must use an _____ tax return to take deductions

B. Capital gains

1. A short-term gain on property held for 12 months or less is taxed at the taxpayer's ordinary income tax rate.
2. A long-term gain on property held for more than 12 months is taxed at a different rate than ordinary income.
3. Salespersons and brokers should recommend that buyers and sellers seek tax advice.

C. Taxation of gain on sale of principal residence

1. The gain from the sale of a principal residence may be excluded from taxation.
 - a. _____ maximum if single taxpayer
 - b. _____ maximum if married and filing jointly

2. The taxpayer must own and occupy for at least _____ before the sale.
 - a. The two years do not have to be sequential.
 - b. There are no other requirements such as age or the purchase of other properties.
3. Capital gain calculation
 - a. Example

Step 1:

Acquisition cost	\$500,000
+ Cost of improvements	$\text{+ } \$30,000$
= Adjusted basis	\$530,000

Step 2:

Sale price	\$700,000
- Selling expenses	$\text{-- } \$42,000$
= Adjusted sale price	\$658,000

Step 3:

Adjusted sale price	\$658,000
- Adjusted basis	$\text{-- } \$530,000$
= Realized capital gain	\$128,000

D. Depreciation

1. A tax advantage of owning business and investment real estate may be depreciation on personal taxes.
 - a. This offsets the lack of liquidity in real estate.
2. Real estate investors and business property owners may take a depreciation allowance on real estate improvements they own (land does not depreciate).
 - a. The residential rental property allowance is _____ years.
 - b. The commercial property allowance is _____ years.
3. The amount is determined by the _____.
4. The formula is the value of the improvements divided by the number of years being depreciated times the number of years already taken.
 - a. Example: A commercial property has improvements valued at \$390,000, which are being depreciated over 39 years. How much has the property depreciated after eight years?
 - i. Solution: $\$390,000 \div 39 \times 8 = \$80,000$

E. 1031 tax deferred exchanges (also called like-kind exchanges)

1. 1031 exchanges are used by investors and business property owners to _____ of capital gains taxes on investment properties.
 - a. The taxes will have to be paid in the future because it is a deferral, not an exclusion.
2. It allows investors or business property owners to sell a property, buy a new property, and defer paying capital gains tax on the sale.
 - a. The investor will not have to pay taxes at the closing on the first property. It defers the payment until the sale of the new property.
 - b. There are many exacting rules for how the exchange must be carried out.
 - i. The salesperson or broker should recommend that the investor or property owner seek tax advice.
 - c. To qualify for a tax-deferred exchange, the trade must be for _____ property.
 - d. Personal and secondary residences are not eligible for a 1031 exchange.

F. California property taxes

- Limited by _____

1. Limited tax rate to
 - a. 1% of assessed value, plus
 - b. voter-approved indebtedness.
2. The assessed value of the property is its full cash value unless there has been a reassessment event.
 - a. Assessment increases are limited to a maximum of _____ per year, unless a reassessment event occurs.
 - i. Ownership changes
 - ii. Property improvements
3. Special property tax exemptions include the following:
 - a. Homeowners are exempt up to _____ of the assessed value.
 - b. Veterans are exempt up to _____ of the assessed value.
 - c. Senior citizens may _____ paying property taxes until they sell.

4. The property tax calendar is based on the fiscal year and runs from July 1 through June 30 of the following year.
 - a. Taxes become a lien on January 1 preceding the tax year.
 - b. Property taxes are payable in two installments.
 - c. The memory aid is _____.
 - i. The first installment is due on _____.
 - ii. The first installment is delinquent on _____.
 - iii. The second installment is due on _____.
 - iv. The second installment is delinquent on _____.

UNIT 3 GLOSSARY REVIEW

27.5 years	exception	Proposition 13
chain of title	grantor	quitclaim deed
cooperative	joint tenancy	severalty
deed	notarized	tenants in common
delivered and accepted	probate	title insurance

1. A written legal document by which ownership of real property is transferred from one party to another is a _____.
2. In order to convey title, a deed must be signed by the _____.
3. Title does not pass to the grantee until the deed is _____.
4. A deed that conveys whatever interest in the property the grantor holds at the time of conveyance and contains no covenants or warranties is a _____.
5. Property owned by one person is said to be owned in _____.
6. A form of concurrent ownership in which each tenant owns an undivided ownership share in the entire property and has no right of survivorship is _____.
7. A form of concurrent ownership in which all owners have equal shares in the property and the right of survivorship is _____.
8. A person who holds stock in a building owned by a corporation owns the rights to a _____.
9. All the documents that comprise the history of the title are the _____.
10. Protection against incomplete or defective records of the title to land can best be obtained by securing _____.
11. A problem that is not covered by standard or extended title insurance is an _____.
12. Most instruments to be recorded must first be _____.
13. The legal process of handling a person's business affairs after death is called _____.
14. The allowance period for depreciation on residential rental property is _____.
15. California property taxes are limited by _____.

UNIT 3 QUIZ

1. In a quitclaim deed, the grantor covenants
 - A. that the title is marketable.
 - B. nothing.
 - C. that she owns the property and has the right to convey title.
 - D. that she will defend any claims against the title.
2. To be valid, a deed must have a
 - A. signature of the grantor.
 - B. list of encumbrances.
 - C. competent grantee.
 - D. description of all improvements.
3. In regards to a deed, the term *execution* refers to
 - A. notarization.
 - B. recordation.
 - C. delivery and acceptance.
 - D. the signature(s) of the grantor(s).
4. Ownership in severalty refers to
 - A. more than one owner.
 - B. the right of survivorship.
 - C. ownership between a husband and a wife.
 - D. ownership by one person or entity.
5. Which of the following is *NOT* essential to the validity of a deed?
 - A. Recording
 - B. Competent grantor
 - C. Execution by the grantor
 - D. Words of conveyance
6. Conveyance of title occurs at the moment the
 - A. deed is accepted by the grantee.
 - B. deed is recorded.
 - C. grantor receives the consideration.
 - D. deed is signed by the grantor.
7. The form of ownership in which the owners own and finance their individual unit plus own a share of common elements is called
 - A. a condominium.
 - B. general partnership.
 - C. a cooperative.
 - D. limited partnership.
8. An owner of a ranch is very reclusive and has not left his home for 30 years. On the far side of the ranch, his neighbor built a barn and corral 25 years ago. In this situation, the neighbor
 - A. will lose all the improvements and land if the owner gives notice.
 - B. has stolen real property and may go to prison.
 - C. may try to claim title through adverse possession and a suit to quiet title.
 - D. will have the right to sell the improvements to the ranch owner because no notice was given.
9. The common elements in a condominium are owned by
 - A. all the members of the HOA as joint tenants.
 - B. all former and current unit owners as tenants in common.
 - C. the HOA and current shareholders in severalty.
 - D. all current owners as tenants in common.
10. Standard coverage title insurance protects against all of the following *EXCEPT*
 - A. a forged deed.
 - B. encroachments.
 - C. errors in the public record.
 - D. errors in the title report.
11. A title search follows documents from the current to the first known source. The examiner is following or creating the
 - A. title commitment.
 - B. title opinion.
 - C. owner policy.
 - D. chain of title.
12. A second mortgage can be distinguished from a first mortgage by the date the mortgage was
 - A. acknowledged.
 - B. given.
 - C. recorded.
 - D. delivered and accepted.

13. A deed that has not been recorded may *NOT* provide

- competent parties.
- constructive notice.
- actual notice.
- a valid document.

14. Title insurance premiums are paid

- once, at the time the policy is issued.
- monthly, with the mortgage payment.
- semiannually, along with the property taxes.
- annually, along with the homeowners insurance premium.

15. Jacobson deeds property to Keene, who neither records her deed nor takes possession of the property. Jacobson later deeds the same property to Linder, who records his deed and takes possession of the property. Linder is not aware of the earlier conveyance to Keene. Who holds legal title to the property?

- Jacobson, because Keene did not record her deed.
- Keene, because Keene's deed is dated first.
- Linder, because his deed was recorded first.
- Keene and Linder as tenants in common, because the form of ownership was not specified in the deed.

16. Before closing, a cloud on the title was found. Which of these should the seller use to clear the title?

- Abstract with a title opinion
- Title commitment
- Title insurance
- Suit to quiet title

17. The four unities of joint tenancy are

- possession, interest, title, and time (TTIP).
- possession, interest, title, and years of ownership (PITY).
- possession, occupancy, separate ownership, and time (POST).
- possession, unity of deed, no survivorship, and title (PUNT).

18. Community property is presumed for married couples unless stated to the contrary in the

- marriage certificate.
- marriage vows.
- mortgage.
- deed.

19. The act of conveying real estate ownership is also known as

- substitution.
- subordination.
- alienation.
- execution.

20. A deed conveys whatever interest is held by the grantor unless it specifically states that it is conveying a

- greater interest.
- liability interest.
- marginal interest.
- lesser interest.

21. An example of an involuntary deed is a

- grant deed.
- sheriff's deed.
- gift deed.
- quitclaim deed.

22. An essential element to gain ownership through adverse possession is

- permissive use of the property.
- nonpayment of property taxes.
- open and notorious occupation.
- a deed from the owner.

23. The standard policy of title insurance is referred to as

- California Land Title Association (CLTA).
- American Land Title Association (ALTA).
- Owners Policy of Title Insurance (OPTI).
- Lenders Association Standard Title (LAST).

24. A document that can be recorded to give interested parties notice that a lawsuit is pending, affecting title to real property, is called a

- real estate lawsuit notice.
- lawsuitius pendulous.
- lis pendens.
- notice of default.

25. An example of an expense involving real property that would not be deductible on federal income taxes is

- property taxes.
- mortgage interest.
- points paid on loans.
- homeowners association dues.

26. The holding period for a real property investment to qualify as a long-term capital gain is more than

- one month.
- six months.
- twelve months.
- two years.

27. The maximum amount of gain that may be excluded from taxation on the sale of a principal residence for a married couple filing a joint return is

- \$500,000.
- \$500,000, but only if they acquire a replacement residence within two years.
- \$250,000.
- unlimited.

28. To qualify for the exclusion from taxation rule, homeowners must own and occupy the property for

- five out of the last ten years.
- two out of the last five years, and the years do not have to be sequential.
- two years from any period of time in the past.
- two out of the last five years, and the years have to be sequential.

29. Which of the following is *TRUE* about like-kind exchanges?

- Like-kind exchanges can be used to completely avoid paying capital gains taxes on the sale of property.
- Like-kind exchanges allow homeowners to sell their residence and transfer taxes to the new residence.
- Like-kind exchanges enable investors and business property owners to defer payment of capital gains taxes on investment properties.
- Like-kind exchanges are too complex and difficult to understand so real estate agents never do them.

30. Property taxes become a lien on

- November 1.
- December 10.
- April 1.
- January 1 of the year preceding the tax year.

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 3 Glossary Review Answer Key

1. deed
2. grantor
3. delivered and accepted
4. quitclaim deed
5. severalty
6. tenants in common
7. joint tenancy
8. cooperative
9. chain of title
10. title insurance
11. exception
12. notarized
13. probate
14. 27.5 years
15. Proposition 13

Unit 3 Quiz Answer Key

1. **B** There are no covenants (promises) in a quitclaim deed.
2. **A** Valid deeds must be signed by the grantor (person conveying the interest). The grantee does not have to sign a deed.
3. **D** Execution of a document refers to the act of signing it.
4. **D** Severalty refers to sole (severed) ownership.
5. **A** Deeds do not need to be recorded to be valid.
6. **A** Title transfers upon acceptance of the deed by the grantee.
7. **A** In a condominium, the owner owns and finances an individual unit. In a cooperative, the owner finances the shares of stock that represents ownership in the cooperative and has a proprietary lease providing rights of possession to the unit.
8. **C** If the neighbor has possessed the property for the statutory amount of time required by the state, the neighbor may use a suit to quiet title to try and obtain title to the property.
9. **D** Common elements are owned by all unit owners as tenants in common.
10. **B** Standard coverage title insurance does not protect against claims involving surveys or encroachments, or other problems that would only be discovered by an inspection of the property.
11. **D** The examiner is following the chain of title.
12. **C** Priority of rights is determined by the date of public notice. The most accepted form of public notice is document recordation.
13. **B** A deed that has not been recorded lacks constructive notice, which is also known as legal notice.
14. **A** Title insurance policies protect against title flaws that already exist but have not been discovered yet. Therefore, the title company charges only one premium, which is typically paid at closing.
15. **C** In a race/notice recording system, a subsequent purchaser who records his deed first has good title to the property, as long as he did not have actual notice of the earlier conveyance.
16. **D** The seller would use a suit to quiet title. Title commitments and opinions would identify the cloud on the title, but not clear it.

17. **A** Possession, interest, title, and time are the four unities of joint tenancy. The memory aid is TTIP.

18. **D** Community property status is presumed for property owned by married couples unless it is stated otherwise in the deed. The burden of proving separate property status is on the spouse claiming separate property status.

19. **C** Alienation (making the ownership alien to yourself) is the act of conveying real estate ownership.

20. **D** A deed conveys the interest held by the grantor unless it states a lesser interest.

21. **B** A sheriff's deed is given as a result of a foreclosure sale and is an involuntary deed. Tax deeds and trustee's deeds are also involuntary deeds.

22. **C** Adverse possession requires the adverse possessor to occupy the property in a manner that is open (it can't be in the middle of the night) and notorious (the owner has to be negligently ignoring who is on the property and what they are doing there).

23. **A** The California Land Title Association (CLTA) is the most commonly used standard form of title insurance in California for owners. It is also referred to as an owner's policy.

24. **C** Lis pendens is Latin for "legal action pending." It does not stop a seller from selling a property when a lawsuit is filed, but it can make it more difficult by alerting potential purchasers, lenders, and title insurance companies that there are legal issues that may cloud the title.

25. **D** Homeowners association dues are not deductible for owner-occupied residential properties. Association dues for rental properties are deductible because they are an operating expense for the business.

26. **C** Twelve months is the holding period to qualify as a long-term capital gain for real property.

27. **A** The maximum amount is \$500,000, and while there are limitations, the two-year replacement rule is no longer required.

28. **B** The homeowner must have occupied the property for at least two out of the past five years to qualify for the exclusion. For example, a qualified homeowner could have lived in the home for six months, moved out for one year, and then moved back in for another year and a half.

29. **C** Like-kind exchanges (also called tax-deferred exchanges, or sometimes erroneously called tax-free exchanges) are used to defer paying capital gains taxes on investment properties until the property traded into is sold. Real estate agents who specialize in these kinds of transactions can make very large incomes.

30. **D** The tax year in California starts on July 1 and goes through June 30. Property taxes become a lien on January 1 of the year preceding the tax year. The "lien date," or the date at which the taxes are an obligation on the property, is January 1 of the preceding tax year even though the actual amount of the lien will not be determined until approximately September or October of that year.

UNIT 4

Real Estate Contracts, Settlement/Closing Procedures, Escrow, and Prorations

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **distinguish** between implied and express contracts and **explain** when a contract is considered legally valid;
- › **identify** the stages of contracting and the essential elements of a valid contract;
- › **explain** when a contract is fully performed and when it is in breach;
- › **list** the types of real estate contracts and **explain** when they are used; and
- › **explain** closing procedures, including the use of an escrow agent and the difference between debits and credits on a closing statement.

KEY POINTS—UNIT 4

- A contract is a legally binding agreement between two or more competent parties to do or not do certain things for consideration. An express contract has been put into words, either spoken or written. An implied contract is created by the actions of the parties.
- In order to comply with the statute of frauds (and be enforceable in court), all contracts for the sale or transfer of real estate must be express written contracts with the exception of a lease for 12 months or less.
- A breach of contract occurs when a party fails, without legal excuse, to perform any promise contained in the agreement. After a breach of contract, the nonbreaching party has four options: acceptance of partial performance, specific performance, liquidated damages, or actual money damages.
- When an agreement doesn't meet one or more of the requirements for a valid contract, it is considered legally void. If a contract appears to be valid, but has a defect giving one or more of the parties the power to avoid performance and rescind the agreement, it is a voidable contract.

- For a contract to be valid, the parties must have contractual capacity (be over 18 and mentally competent), and there must be mutual agreement between the parties, contractual intent, a lawful objective, consideration, and the document must be in writing (for most real estate contracts).
- To create a valid contract, consent must be freely given. It is not freely given when it is the result of fraud, misrepresentation, duress, undue influence, or mistake. Under these conditions, the contract would be voidable by the disadvantaged party.
- Initially, a purchase agreement serves as the buyer's offer to purchase and as a receipt for the buyer's earnest money deposit. After acceptance by the seller, it becomes the contract of sale and the buyer has equitable title until closing, when legal title will be passed.
- An option agreement is a unilateral contract. It creates a right for the optionee/buyer to buy or lease property for a fixed price during a limited period of time. The optionor/seller is obligated to sell if the option is exercised.
- A landlord-tenant relationship is created by a contract called a lease, which creates a leasehold estate. Lease types are distinguished by their different rent structures and include the gross lease (fixed lease), net lease, percentage lease, graduated lease (step-up lease or index lease), land lease (ground lease), and sandwich lease.
- The main types of leasehold estates are the estate for years, the estate from period to period, and the estate at will. An estate for years is a tenancy for a fixed period of time. An estate from period to period automatically renews for a like term as the rent is paid for each period. An estate at will is for an indefinite time period, and it continues until either party gives proper notice of termination to the other party.
- Actual eviction is used by a landlord to remove tenants that are in breach of the terms of the lease. It gives the landlord, after the court hearing, the right to remove the tenants and their possessions from the property.
- Constructive eviction is a wrongful eviction that occurs when the landlord interferes with the tenant's possession of the leased property, or materially disturbs the tenant's use and enjoyment of the property. This gives the tenant the right to terminate the lease and vacate the property.
- A security deposit is any deposit of money meant to secure the performance of a residential rental agreement. When a lease is terminated, the landlord may use the deposit to cover any unpaid rent and pay for any damage caused by the tenant. If any part of the deposit is left over, it must be returned to the tenant within a time determined by law.
- The enforceability of contracts depends on the legal status of the document.
- The TILA-RESPA Integrated Disclosure rule regulates lenders and standardizes real estate settlement practices in residential mortgage transactions. The law requires that certain disclosures be made to loan applicants concerning all closing costs the buyer will incur. The lender must provide a Loan Estimate form within three business days after receiving the consumer's application and no later than seven business days before closing unless the consumer has a bona fide personal financial emergency. A Closing Disclosure form must be supplied no later than three business days before consummation of the loan.
- Brokers and the licensees who work for them have responsibilities to safeguard the money involved in a transaction. Additionally, a final accounting called a settlement statement is provided at closing to verify all funds paid in connection with the transaction are correctly transferred.

I. HOW A CONTRACT IS CREATED

- A contract is a voluntary, binding agreement between two or more competent parties to do (or not do) a specific thing.

A. Implied contract

1. _____

2. No implied contracts in transfer of any interest in real estate

B. Express (declared) contract

1. _____

2. _____

a. Most real estate contracts need to be _____ to be enforceable.

3. Bilateral

a. Promise exchanged for a promise

b. Both parties are bound to perform

i. Example: Purchase agreement—"I promise to sell and you promise to buy"

4. Unilateral

a. Promise exchanged for performance

b. _____ is bound

i. Example: Option contract—"I promise to sell if you decide to buy"

II. CLASSIFICATION OF CONTRACTS

A. Valid

1. A valid contract meets all legal requirements; it contains _____.

2. A valid contract is binding and enforceable in court by both parties.

B. Void

1. A void contract has no legal effect; it is not enforceable by either party.

2. A void contract lacks one or more of the essential elements of a valid contract.

C. Voidable

1. A voidable contract appears to be valid, but one party may disaffirm it because the party is a _____ or was subject to _____.
2. The disadvantaged party may take legal action to disaffirm the contract.

D. Unenforceable

1. A contract may fulfill all essential elements, but due to the statute of limitations, it may be unenforceable.
 - a. The statute of frauds requires that, in order to be enforceable, certain contracts must be _____ and signed by all parties expected to perform.
 - b. The statute of frauds requirement includes contracts for the transfer of _____.
 - i. An exception is a lease for one year or less.
 - ii. The purpose is to prevent problems associated with oral contracts.
 - c. The statute of limitations determines the time limits for when the nonbreaching party can take legal action against the breaching party.
 - i. Breach of oral contracts: two years after the breach
 - ii. Breach of written contracts: four years after the breach
 - iii. Fraud: three years from date of discovery (see discussion of the statute of frauds requirement that certain contracts be in writing in order to be enforceable in Section V)

III. STAGES OF A CONTRACT**A. Offer**

1. This is a negotiation period, so no contract exists yet.
2. The offer may be countered and new offers made until there is a _____.
 - a. In the offer stage, earnest money is not usually deposited because there is not a contract yet.
3. Strike-through changes on an offer must be initialed (and dated for clarity) by all parties to be enforceable.
4. Upon a meeting of the minds and communication of acceptance by the parties, a contract is formed.
5. Termination of the offer before acceptance can occur through any of the following:
 - a. Counteroffer
 - i. Any change to an offer will terminate the offer and create a counteroffer.

- b. Revocation or withdrawal by offeror
- c. Rejection by offeree
- d. Lapse of an unreasonable time
- e. Event that destroys the property (e.g., a fire)
- f. Death of either party

B. Contract

- 1. All parties must abide by the terms of the contract or be in _____.
- 2. In order for the contract terms to be changed, an _____ must be negotiated and signed by all parties.

C. Termination

- Determined by the contract
 - 1. Lease—on expiration date or notice as determined by the lease contract
 - 2. Option—on expiration date unless option is exercised; then the option will need a purchase contract to close
 - 3. Purchase contract—either by a party exercising a contingency and terminating, or at closing with conveyance of the deed
 - a. After closing, the contract is considered to be executed.
 - 4. Breach—nonbreaching party will have remedies against the breaching party per the contract

IV. ESSENTIAL ELEMENTS OF A VALID CONTRACT

- Memory aid: CO-CA-CO-LA (See Figure 4.1)

A. COnsent/mutual agreement/_____

- Must have a _____
 - 1. Offer accepted and communication of acceptance given before the offer is withdrawn
 - a. The contract becomes binding upon _____.
 - b. If the offer is withdrawn before communication of acceptance, there is no contract.

2. Counteroffer—a change of any conditions in the offer

- a. Legally, a rejection _____ (but it usually carries forward many terms from the original offer).
 - i. A counteroffer is not partial acceptance, partial rejection, or partial termination; a counteroffer is a _____ of the original offer and the creation of a new one.
- b. In a counteroffer, the original offeree becomes the offeror.
- c. A seller who gave a buyer a counteroffer with three days to accept and then received a new and better offer from another buyer must withdraw the counteroffer before accepting the new offer.
- d. A buyer who receives a counteroffer does not need to respond to it before writing an offer on a different property.
- e. A seller who makes changes to the offer document and initials and signs the offer has created a counteroffer.

3. Contractual intent—reality of consent
 - a. Intent to be bound
4. No fraud or misrepresentation
 - a. The parties must not make false statements or _____.
 - i. A material fact is one that, if known, might change a decision and _____.
 - b. This does not include _____ (the act of making a claim that anyone would understand is not literally true).
 - c. A broker may rely on a seller's statement of repair unless it is apparent that it is not true.
 - d. *Caveat emptor* means "let the buyer beware"; the use of this phrase is not common due to disclosure requirements.
 - e. Sellers must disclose all material defects and facts even if selling "as is."
 - f. _____ consists of
 - i. lying,
 - ii. suppressing known facts, and
 - iii. making a promise with no intention of performing it.
 - g. _____ can include misrepresentations made without fraudulent intent.

5. No duress or menace
 - a. No force or threat
6. No undue influence
 - a. No unfair advantage
7. No mutual mistake
 - a. No mutual misunderstanding

B. CApacity/legally _____

1. Must be _____ years old or an emancipated minor
2. Must be _____
 - a. Persons determined to be incompetent _____ cannot enter into a contract unless the court authorizes someone to act on their behalf.

C. _____

1. Consideration is money, promises, or something of value.
2. _____ for a sales contract and therefore is not required.

D. LAwful objective

1. The contract must have a legal purpose.
2. The contract would be void if the property was condemned during the contract period.

E. In writing and signed

1. Contracts that must be in writing to be enforceable include the following:
 - a. An agreement that will not be completed within a year.
 - b. An agreement for the sale of real property or an interest in real property, or the lease of real property for more than one year.
 - c. An agreement that employs an agent to purchase or sell real property or lease real property for a period longer than one year.
 - d. An agreement by a purchaser of real property to pay a debt secured by a mortgage or deed of trust on the property purchased, unless the purchaser is to assume the debt.

Figure 4.1: Essential Elements of a Contract

1. Consent/mutual agreement/offer and acceptance
2. Capacity/legally competent parties
3. Consideration
4. Lawful objective
5. In writing and signed

V. PERFORMANCE AND DISCHARGE**A. Executory versus executed**

1. Executory— _____
 - a. The executory period starts upon communication of acceptance of the offer.
2. Executed—duties fully performed
 - a. The purchase agreement is executed once the deed has been delivered and accepted.

B. Addendum

1. Additional material attached to and made _____
(e.g., disclosures and contingencies)

C. Amendments/modification

1. _____ of contract terms by mutual agreement
2. Must be _____ by all parties

D. Assignment

1. Transfers _____, but not liability

E. Novation

1. Transfers contract rights and liability
2. _____ replaces original contract

F. Legal impossibility/impossibility of performance

1. A duty required by the contract that cannot be legally performed

G. Death

1. Most contracts are not terminated by death so a deceased's estate would have to honor a contract.
 - a. A contract would terminate when there is no one left to perform.
2. Certain contracts may be terminated by death.
 - a. Example: personal services contract, such as listings
3. Offers, which are not contracts, terminate upon death of the parties.

H. Mutual rescission

1. Return of all parties to their original condition before contract was executed (earnest money typically will be returned)

VI. REMEDIES FOR BREACH OF CONTRACT/DEFAULT

A. How a breach of contract occurs

1. A breach of contract is when one party is in default without a legal excuse.
 - a. If a seller takes fixtures after closing that were not excluded from the purchase agreement, the seller would be in breach.
 - b. If a buyer's earnest money check was returned for nonsufficient funds, the buyer would be in breach.

B. Remedies for the nonbreaching party

1. Acceptance of partial performance
 - a. _____
2. Specific performance
 - a. Sue to force to performance—for _____
 - b. Available to both buyer and seller
3. Liquidated damages (available only if specified in the agreement)
 - a. Retain breaching party's deposit (i.e., earnest money, damage deposit)
 - b. Available _____ in a purchase contract
4. Actual damages
 - a. Sue for _____

VII. TYPES OF REAL ESTATE CONTRACTS**A. Purchase agreement**

- Sets forth the conditions for closing
- Also known as an offer to purchase, contract of sale, or purchase and sale agreement

1. The offer becomes an _____ contract upon communication of acceptance.
 - a. Communication of acceptance is when the last party has signed and the other party has been notified.
 - b. Oral notification of written acceptance is adequate.
2. It is a bilateral agreement, so it is binding on both parties.
 - a. Purpose: I promise to buy and you promise to sell
3. The parties are the following:
 - a. Seller—holds _____
 - b. Buyer—holds _____ (“equitable owner”)
4. The essential elements include the buyer’s and seller’s signatures; property description; price and terms; and is in writing and signed.
5. The contract typically includes one or more _____ clauses stating that the party will not be responsible for completing the purchase under certain conditions.
 - a. Typical contingencies are for financing, appraisal, and inspection.
 - b. If the buyer terminates per a contingency, the _____ and the contract is terminated.
 - c. The broker is not entitled to a commission if the contract is terminated per a contingency.
6. The contract often includes a “time is of the essence” clause, which requires exact adherence to dates specified or the party will be in breach.
7. Risk of loss in California is determined by the Uniform Vendor and Purchaser Risk Act.
 - a. If the buyer moves into the property before the close of escrow, the risk of loss is borne by the buyers. Agents should encourage buyers to make sure they place adequate insurance coverage on the improvements.

Figure 4.2: The Stages of a Real Estate Purchase Contract

Stage:	1. Listed	2. Offer, acceptance, and communication of acceptance	3. Under contract (with or without earnest money)	4. Closing
Features:	On the market Offeror—made last offer Offeree—received last offer Attachments—explain Addenda(um)—attached to offer	Buyer (vendee) has equitable title (owner in equity) Seller (vendor) retains legal title Amendments modify contracts	Transfer of legal title to buyer Deed: Grantor = seller Grantee = buyer	
Key Points:	Acceptance must be communicated to offeror to form binding contract Earnest money attached to offer and in broker's safekeeping	Executory period Earnest money deposited upon acceptance of offer	Executed Buyer receives credit for earnest money at closing	

B. Option

1. Definition
 - a. A potential buyer purchases the right to buy in the future from a seller who agrees to sell within a set period for a set price.
2. Purpose
 - a. I promise to sell if you decide to buy.
3. Unilateral agreement
 - a. It is binding on the seller, and the buyer has the option to perform.
 - b. Original contract contains all the terms that will be binding if the option is exercised.
 - c. It becomes bilateral when exercised by the optionee.
 - d. If the option is not exercised, it expires at the end of the option period.
4. Parties
 - a. Owner—optionor
 - b. Potential buyer—optionee

5. Option fee

- a. It typically includes a nonrefundable option fee to hold the option for the buyer.
 - i. The parties can negotiate whether the option fee will be applied toward the purchase price if the option is exercised.
- b. If the buyer decides not to buy, the seller does not have any _____ except to keep the buyer's option fee.

C. Lease-option

1. A lease-option is typically used when a tenant wants to purchase a property but can't get financing for the full amount.
2. Part of the rent may be applied to the purchase price; contract terms will dictate conditions.

D. Right of first refusal

1. The right of a person to have the first opportunity to purchase or lease real property.
2. It gives the owner _____ than an option because there is typically no set price and the seller can sell to others if the first right is not exercised.

E. Sale-leaseback

1. In a sale-leaseback, the owner sells the property to an investor who leases it back.
2. It converts equity into working capital without giving up possession.

F. Lease

1. Purpose
 - a. I promise to let you occupy, and you promise to pay rent.
2. Bilateral
3. Parties
 - a. Landlord = _____
 - b. Tenant = _____
4. Essential elements
 - a. Names of lessor and lessee (landlord and tenant)
 - b. Description of property
 - c. Rent terms

- d. Signature of lessor
- e. Signature of lessee, payment of rent, or move-in

5. Reversionary interest

- a. The lessor has a reversionary interest, which allows the lessor to retake possession.

6. Types of leases

- a. Gross/fixed: tenant pays _____ and landlord pays all expenses
 - i. Most typical for residential properties, but could be used for commercial properties
- b. Commercial leases
 - i. Net: tenant pays _____ (e.g., property taxes, insurance, and maintenance costs)
 - ii. Percentage: rent is based on a percentage of _____; most typical in retail properties
 - iii. Variable: rent increases or decreases at predetermined intervals
 - Graduated: rent increases at predetermined intervals and amount set in lease terms
 - Index: rent is adjusted based on an economic indicator (e.g., consumer price index)
 - iv. Ground (land): used to rent unimproved property
 - Improvements usually become the landlord's property at the end of the lease.
 - Tenant would want a _____ if adding improvements.

7. Termination of lease

- a. Termination is based on the expiration date of the lease or a required notice.
- b. The sale of the property does not terminate the lease.
 - i. The buyer takes title "subject to" the lease.
- c. Leases can be terminated in the following ways:
 - i. Estate for years
 - _____ (not death)
 - ii. Periodic estate
 - Notice (not death)

iii. Estate at will

- Notice or death

iv. Actual eviction

- A court action, called an _____, is brought by the landlord against a tenant who is in breach.
- Before filing the unlawful detainer, the landlord must first deliver a _____ to the tenant in default.

v. Constructive eviction

- The lease is terminated if the lessee must vacate due to lessor's act or failure to act.
- It cancels the lease and the tenant's obligation to pay rent, but the tenant must move.

VIII. SETTLEMENT/CLOSING PROCEDURES

A. TILA-RESPA Rule

1. The TILA-RESPA rule standardizes closing practices for one- to four-family residential properties financed by federally related loans.
 - a. It includes FHA and VA loans, conventional loans funded by regulated lenders, and loans that will be sold on the secondary mortgage market.
2. The TILA-RESPA rule regulates lenders, title companies, and real estate licensees.
3. Lenders must give a _____ (including loan origination and discount points) and a *Your Home Loan Toolkit* booklet at the loan application or within _____ of application.
 - a. The Loan Estimate is used at the beginning of the loan process to provide the borrower with an estimate of the total closing costs so the borrower knows what funds to bring to closing.
4. Lenders must provide the Closing Disclosure no later than three business days before consummation of the loan.
 - a. The Closing Disclosure must match the Loan Estimate.
 - b. If the creditor provides a corrected disclosure (significant changes to loan terms), it may also be required to provide the consumer with an additional three-business-day waiting period before consummation of the loan.
 - c. The settlement agent must provide its copy of the Closing Disclosure no later than the day of consummation.

5. RESPA restricts the amount of advance escrow payments (taxes and insurance) and prohibits kickbacks.
 - a. Escrow accounts may not have more than two months of additional fees plus what is owed.
 - i. Example: The current insurance amount owed is six months at \$50 per month or \$300, so the lender may hold up to \$400 in the insurance escrow account.

B. Escrow

1. Closings are conducted using escrow agents.
2. The escrow agent/escrow holder is a disinterested party who assists in carrying out the transaction according to the terms of the _____.
3. Escrow agents may initiate a court procedure called an _____ to resolve a dispute over deposit money.
4. Stages of escrow
 - a. _____ —The documents and money have been deposited in the escrow and parties are waiting to close.
 - b. _____ —Escrow has closed, which is normally upon recordation of deed.

C. Closing statement

1. A closing statement is a detailed accounting of each party's debits and credits (amounts paid and received).
2. A debit to the buyer is anything that increases the amount of money the buyer must bring to the closing.
 - a. Examples: _____, new loan origination fees, recording the deed, or discount points if paid by buyer
3. A credit to the buyer is anything that decreases the amount of money the buyer must bring to the closing.
 - a. Examples: _____, new loan amount (all loans are always a buyer credit), interest on assumed mortgage, or seller financing
4. A debit to the seller is anything that decreases the amount of money the seller takes from the closing.
 - a. Examples: _____, owner's title insurance, payoff of existing loan, or seller financing
5. A credit to the seller is anything that increases the amount of money the seller takes from the closing.
 - a. Example: _____

IX. PRORATION

A. Calculating prorations

1. Certain costs are prorated (divided between the buyer and the seller) as of the date of closing.
 - a. These costs include things such as interest on assumed mortgages, rents, utilities, HOA dues, and taxes.
2. If the payment was made in advance, calculate the amount owed on the buyer side of the billing period. If the payment will be made in arrears, calculate the amount owed on the seller side of the billing period.
 - a. Remember: The party that writes the big check (actually pays for the bill in full) will receive a credit at settlement.
3. The prorated amount will always be an _____ with a debit to one party and a credit to the other.
 - a. Example: The seller owes property taxes of \$50 to the buyer, so debit the seller \$50 and credit the buyer \$50.
4. Rent will be prorated but security deposits will not because the full deposit amounts transfer to the new owner to hold for the tenant.

Figure 4.3: Proration Calculations

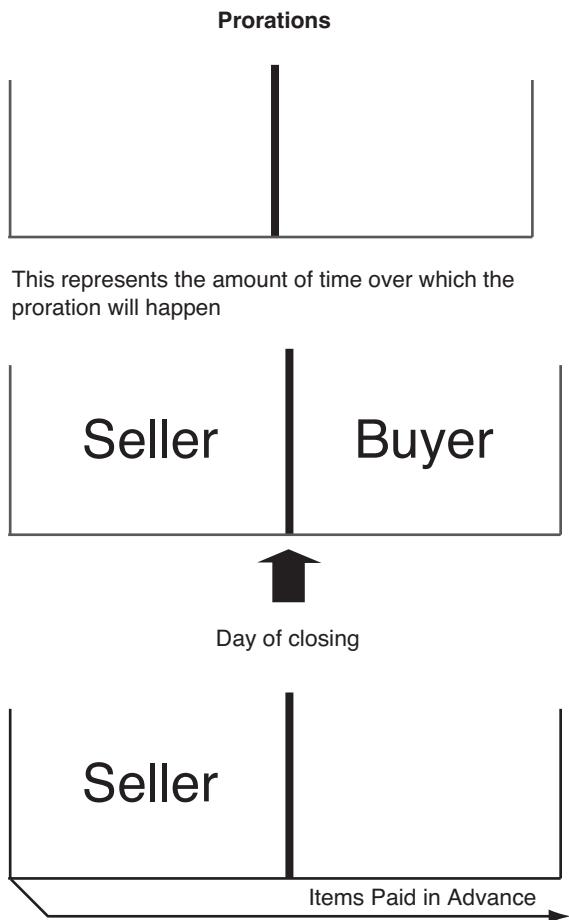
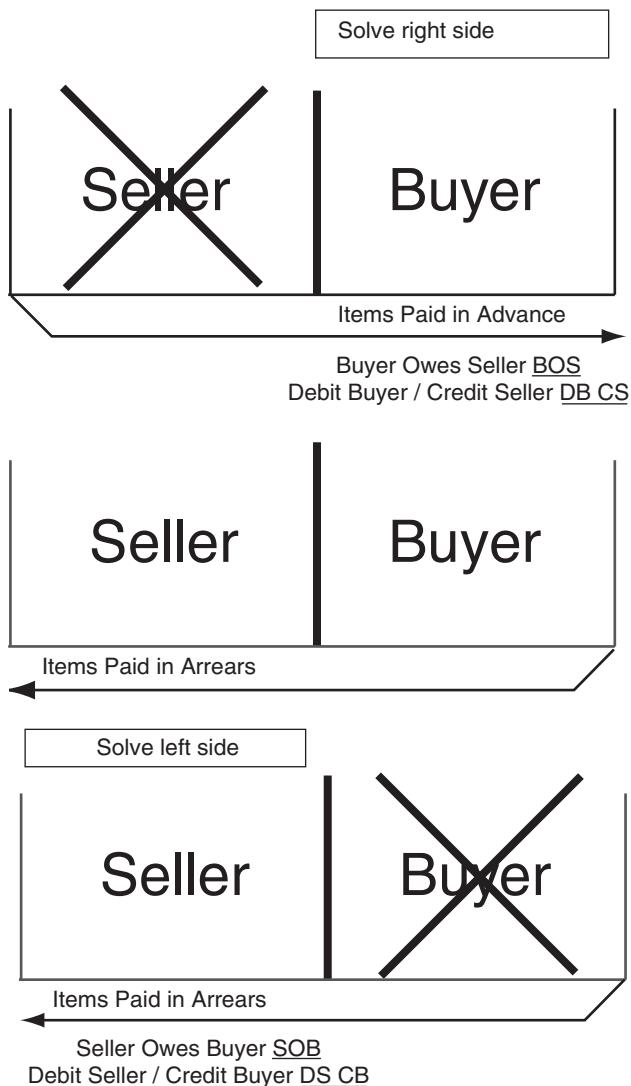
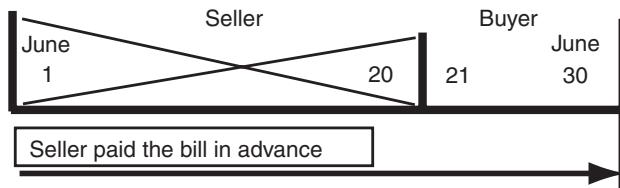


Figure 4.3: Proration Calculations (Continued)

5. The proration calculation is always the same: (Amount for the billing period ÷ days in the billing period) × days the person owns.
6. On the state exam, the question may use 360 days per year, 30 days per month, and the buyer typically is the owner on the day of closing, or the question may use the actual days in a 365-day year and stipulate who is the owner on the day of closing. Read the question carefully; there is usually an answer choice with the incorrect way of calculating the days.
 - a. Always complete the proration using the information given in the exam question.

B. Practice question

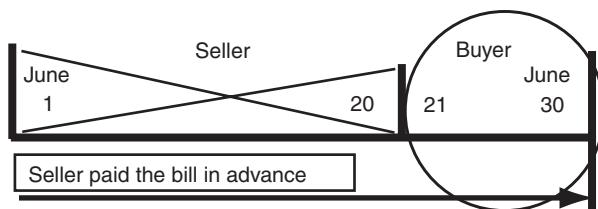
1. An investment property is being closed on June 20 with the seller having the day of closing. The water bill for the month paid in advance is \$60. How will it be paid at closing?



- The buyer owes because the seller paid the bill on June 1 for the entire month. The buyer owes the portion of the month from June 21–30.
- To find the days the buyer owes, subtract the total days from the _____: $30 - 20 = 10$ days.
- The formula is always the same:
 $(\text{Total amount} \div \text{total days}) \times \text{days owed} = \$$
 $(\$60 \div 30) \times 10 \text{ days} = \$$
 $\$2 \times 10 \text{ days} = \20
 Buyer owes seller: debit buyer and credit seller

C. Big side versus little side

- Some proration questions can be solved without having to do the math by simply looking for the big side versus little side.
- In the previous problem, the buyer owed the little side (smaller number of days in the billing period).



- Debit buyer \$40, credit seller \$40
- Credit seller \$20, debit buyer \$20
- Debit seller \$40, credit buyer \$40
- Credit buyer \$20, debit seller \$20
- There is no need to do the math because the question states that the buyer owed (debit the buyer) the seller (credit the seller) the small side of the equation. The answer is b.

UNIT 4 GLOSSARY REVIEW

addendum	fraud	offeror
communication of	gross lease	option
acceptance	implied	statute of frauds
consideration	mutual agreement	unilateral
earnest money	net lease	voidable
express		

1. A contract whose terms have been explicitly declared either verbally or in writing is a(n) _____ contract.
2. When only one party to the agreement makes a promise, the result is a _____ contract.
3. A contract in which one party has the right to void the contract is a _____ contract.
4. A contract created by the actions of the parties is a(n) _____ contract.
5. A lease agreement in which the tenant pays rent only is a _____.
6. A lease agreement in which the tenant pays rent plus operating expenses is a _____.
7. A unilateral contract in which the buyer has the right to purchase a property from the seller if the buyer chooses to do so is a(n) _____.
8. A party attempting to enforce an oral executory contract for the purchase of real estate would be stopped by the _____.
9. _____ means that there was an offer and acceptance; there was no fraud, misrepresentation, or mistake; and the consent was genuinely and freely given.
10. The party who makes an offer to another is known as the _____.
11. An accepted offer becomes binding on the offeror upon _____.
12. Entering into a contract by intentionally deceiving a party is _____.
13. Something of value given in exchange for something else of value is _____.
14. _____ is not consideration but may be required as part of liquidated damages in a purchase contract.
15. Additional material attached to and made part of an offer is an _____.

UNIT 4 QUIZ

1. A contract that has *NOT* yet been fully performed is
 - A. unenforceable.
 - B. voidable.
 - C. executory.
 - D. executed.
2. A contract that exchanges a promise for performance is
 - A. implied.
 - B. unilateral.
 - C. bilateral.
 - D. executory.
3. All of these are essential elements of a contract *EXCEPT*
 - A. mutual agreement.
 - B. a lawful objective.
 - C. consideration.
 - D. earnest money.
4. The electrical wiring in a house is defective. The broker who listed the house is aware of this and intentionally deceives a potential buyer about it. The buyer purchases the home and later suffers a financial loss due to the faulty wiring. This is an example of
 - A. mistake of law.
 - B. fraud.
 - C. mistake of fact.
 - D. novation.
5. Which of the following requires that real estate sales contracts be in writing?
 - A. Caveat emptor law
 - B. Truth in Lending Act
 - C. Statute of limitations
 - D. Statute of frauds
6. Which of the following statements regarding a purchase agreement is *TRUE*?
 - A. The contract is binding on both parties.
 - B. The contract may be oral.
 - C. The contract terms must be identical to the terms in the listing agreement.
 - D. The contract conveys legal title when signed by both parties.
7. A contract that conveys the right to quiet enjoyment and use of property but does *NOT* convey title is a
 - A. bill of sale.
 - B. lease.
 - C. quitclaim deed.
 - D. dedication.
8. A new contract that transfers all rights and liabilities is
 - A. an assignment.
 - B. a subordination.
 - C. a novation.
 - D. an option.
9. A seller may keep the buyer's earnest money as liquidated damages if
 - A. that is stated in the listing agreement as a remedy for the seller.
 - B. the seller and the broker agree that the buyer defaulted and the contract calls for specific performance.
 - C. the buyer defaults and the purchase agreement stipulates liquidated damages as a remedy.
 - D. the seller failed to perform an essential element of the contract.
10. A contract in which one party purchases the right to buy at a fixed price within a specified period is
 - A. a purchase agreement.
 - B. a listing agreement.
 - C. a lease.
 - D. an option.
11. A contract between two parties that legally binds one party to perform, but allows the other party to disaffirm it, is
 - A. executed.
 - B. void.
 - C. voidable.
 - D. bilateral.

12. A buyer signed a purchase agreement to buy a home. The seller then decided not to sell. The buyer sued the seller successfully and was able to purchase the house. What was the contract remedy if the seller was in default?
 - A. Unilateral rescission
 - B. Mutual agreement
 - C. Specific performance
 - D. Damages
13. When a party is in default in a contract due to missing a payment deadline, the contract is considered to be
 - A. breached.
 - B. executed.
 - C. unilateral.
 - D. illegal.
14. A commercial lease in which the tenant pays the landlord a base rent, plus a share of the gross sales from the tenant's business, is a
 - A. net lease.
 - B. ground lease.
 - C. gross lease.
 - D. percentage lease.
15. A commercial lease that requires the tenant to pay a percentage of the property's operating expenses is a
 - A. percentage lease.
 - B. net lease.
 - C. gross lease.
 - D. standard lease.
16. A landlord has not paid the utility bills for his apartment building, so the heat, water, and electricity are shut off. Because of this, the tenants move out and have the right to terminate their leases. Which of the following legal concepts does this example illustrate?
 - A. Constructive eviction
 - B. Mutual rescission
 - C. Actual eviction
 - D. Eminent domain
17. Upon acceptance and communication of acceptance, an offer is considered to be
 - A. a counteroffer.
 - B. unilateral.
 - C. a contract.
 - D. valid.
18. If a commercial tenant only pays rent, the tenant *MOST* likely has a
 - A. gross lease.
 - B. net lease.
 - C. percentage lease.
 - D. ground lease.
19. In an executory purchase contract, the buyer's interest is described as
 - A. legal title.
 - B. ownership in equity.
 - C. naked legal title.
 - D. free and clear title.
20. The buyer and the seller have entered into a binding contract for sale. However, before closing the law changes and the buyer's intended use of the property becomes illegal. Which is *TRUE*?
 - A. The contract is valid and enforceable under the rules of risk.
 - B. The contract is terminated due to fraud by the seller.
 - C. The contract is void due to impossibility of performance.
 - D. The contract is valid but the price must be renegotiated.
21. Consideration could be all of the following *EXCEPT*
 - A. a promise.
 - B. money.
 - C. something of value.
 - D. earnest money.
22. Two forms of eviction are
 - A. sheriff and trustee.
 - B. actual and constructive.
 - C. landlord and tenant.
 - D. judicial and sufferance.
23. When the buyer is in default and the seller keeps the earnest money, the contract *MOST* likely provided for
 - A. specific performance.
 - B. actual damages.
 - C. executed damages.
 - D. liquidated damages.

24. Alice is a minor who entered into a contract to sell to Bob the house she had inherited. This contract is *MOST* likely
 - A. valid.
 - B. void.
 - C. voidable by Bob.
 - D. voidable by Alice.
25. The remedy for parties in default that is available to both the buyer and the seller in a purchase contract is
 - A. specific performance.
 - B. liquidated damages.
 - C. actual damages.
 - D. lis pendens.
26. The seller told the buyer that the property had no roof leaks. But when the buyer had the property inspected, a roofing contractor found leaks and said they had been leaking for months. The contract between the seller and the buyer is probably
 - A. void.
 - B. voidable.
 - C. valid.
 - D. implied.
27. Contracts that transfer interests in real estate should be
 - A. implied contracts.
 - B. unilateral contracts.
 - C. bilateral contracts.
 - D. express written contracts.
28. A contract between two parties who each make a promise to perform certain acts is called
 - A. a bilateral contract.
 - B. a unilateral contract.
 - C. an implied contract.
 - D. a voidable contract.
29. A real estate contract with a minor is
 - A. voidable.
 - B. void.
 - C. unilateral.
 - D. illegal.
30. A tenant has two years left on a five-year lease of commercial property. The tenant assigns the remaining two years of the lease. To whom did the tenant assign the lease?
 - A. The landlord
 - B. The new tenant
 - C. The lessor
 - D. None of these

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 4 Glossary Review Answer Key

1. express
2. unilateral
3. voidable
4. implied
5. gross lease
6. net lease
7. option
8. statute of frauds
9. mutual agreement
10. offeror
11. communication of acceptance
12. fraud
13. consideration
14. earnest money
15. addendum

Unit 4 Quiz Answers

1. **C** Before execution, the contract is executory.
2. **B** A promise for a promise is bilateral; a promise for performance is unilateral.
3. **D** Earnest money is not an essential element of a contract. Earnest money is liquidated damages for the seller to retain in the event of the buyer's breach.
4. **B** Intentional deceit is fraud.
5. **D** The statute of frauds requires all real estate contracts (except leases for one year or less) to be in writing.

6. **A** A purchase agreement is binding on both the buyer and the seller.
7. **B** The lessor (landlord) grants the right of possession to the lessee (tenant); the lessor retains title.
8. **C** A transfer of contract rights and liabilities to another using a new contract is a novation.
9. **C** When the buyer breaches the purchase agreement, the seller may keep the earnest money as liquidated damages if the purchase agreement provides for that remedy.
10. **D** In an option, the optionee purchases the right to buy.
11. **C** In most voidable contracts, only one of the parties is legally bound to perform.
12. **C** An order of specific performance requires the defaulting party to perform as agreed in the contract.
13. **A** A party who is in default in a contract is said to be in breach.
14. **D** Percentage leases are used for commercial and retail properties.
15. **B** In a net lease, the tenant pays a base rent plus some or all of the operating expenses.
16. **A** In a constructive eviction, the tenant terminates the lease because the landlord has caused or permitted a substantial interference with the tenant's use and enjoyment of the property.
17. **C** Upon communication of acceptance, the offer becomes a contract. The offer and contract could be invalid if they were missing an essential element, such as competent parties.

18. **A** In a gross lease, the tenant pays only rent and the landlord pays all expenses. It is typically used in residential leasing, but could also be used for commercial properties.

19. **B** Under a purchase agreement or a contract for deed, the buyer holds equitable title. The seller holds legal title until the seller delivers the deed to the buyer.

20. **C** When a change in law makes the purpose of a contract illegal, it is void due to impossibility of performance (it now lacks a legal purpose).

21. **D** Earnest money is a remedy for default and not part of consideration.

22. **B** Actual eviction is what a landlord uses when tenants are in default; constructive eviction is what tenants may claim if the landlord is in default.

23. **D** Earnest money is what the buyer gives the seller in case the buyer defaults on the contract. It is typically the only thing the seller will receive in a liquidated damages contract.

24. **B** A minor generally cannot make a contract concerning real estate. Such a contract would be void.

25. **A** Specific performance is the only standard remedy for default that is available to both parties in a purchase agreement.

26. **B** The contract is voidable due to fraudulent misrepresentation of the condition of the property.

27. **D** Express (meaning that the terms are specifically identified in the contract) written contracts are used in the transfer of real estate.

28. **A** A bilateral contract contains a promise from each party.

29. **B** The contract is void because a minor generally cannot make a contract concerning real estate.

30. **B** An assignment of a lease transfers the rights of the original tenant to the new tenant for the remainder of the term of the lease.

UNIT 5

Property Valuation and Financial Analysis

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **explain** the purpose and function of appraisals in real estate transactions;
- › **identify** the elements and principles of value and how each impacts the value of real property;
- › **summarize** the methods for valuing property for appraisal purposes; and
- › **discuss** how and why appraisers reconcile the three approaches to value.

KEY POINTS—UNIT 5

- An appraisal is an estimate or opinion of value. A common definition of value is the present worth of future benefits. For appraisal purposes, value is generally measured in terms of money.
- Appraisers must be licensed. Brokers and salespeople may complete a competitive market analysis (CMA) but should clearly identify that the CMA is not an appraisal.
- An appraisal is required for all federally related loans (e.g. conventional, FHA, or VA loans from any federally regulated lender).
- The four essential elements of value for real property are utility, scarcity, demand, and transferability (use the memory aid USDT). If any of these items are missing, the property may have less or no value.
- Appraisers have developed principles of value to guide them in the appraisal process. These include the principle of highest and best use, the principle of anticipation, the principle of supply and demand, the principle of substitution, the principle of conformity, and the principle of contribution.

- Steps in the appraisal process include defining the problem, gathering and verifying general and specific data, applying one or more of the three approaches to value (sales comparison, cost, and income approaches), and weighing each approach (reconciliation) to arrive at a final estimate of value, which is written in an appraisal report.
- In the sales comparison approach (the method most often used for appraising residential property), the prices of sold properties comparable to the subject property are adjusted in relation to the subject to determine the subject property's market value.
- In the cost approach, the appraiser estimates the cost of replacing or reproducing the property improvements, deducts estimated depreciation, and adds the estimated value of the land. Depreciation is a loss in value due to any cause, including physical deterioration, functional obsolescence, and economic obsolescence.
- In the income approach, the net operating income generated by the subject property is capitalized (estimating present value based on current or expected income) to arrive at an estimate of value. Real estate investors are concerned about the capitalization rate or rate of return of their properties.
- Reconciliation is the process where different approaches are weighed and final value is determined.

I. APPRAISAL

A. Definition of an appraisal

1. An appraisal is an _____ of value supported by an analysis of relevant property data.
 - a. Appraisals are regulated at both the state and federal level.
 - i. They must be done by a licensed appraiser.
 - ii. They have a different, and typically more thorough, analysis process than a comparative market analysis (CMA) or broker's price opinion (BPO).
 - b. The Uniform Residential Appraisal Report (URAR) is the standard form typically used for residential appraisals.

B. Appraisal licensing

1. Appraisers must be licensed or certified according to state law, and in accordance with federal regulations.
2. Appraisers may have further designations such as MAI (Member of the Appraisal Institute) or SRA (Senior Residential Appraiser) from the Appraisal Institute.
3. Appraisers are also expected to follow the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

C. Purpose and function of appraisals

1. Most appraisals seek to estimate market value on behalf of a lender but could also be used by sellers estimating the market value of their property.
 - a. An appraisal is required for all _____, such as conventional, FHA, and VA loans from regulated lenders; it is not required for seller-carry loans.
 - b. An appraisal assures that the relationship between the amount of the loan and the value of the property is appropriate (loan-to-value ratio).
2. Appraisals are also used for insurance, condemnation proceedings, and so on.

D. CMA/BPO/broker opinion of value (BOV)

1. A real estate licensee's job is to perform a CMA, not an appraisal.
2. The licensee researches and evaluates comparable properties that have recently sold.
 - a. It is similar to the sales comparison approach (will be covered later).

3. A CMA/BPO/BOV assists sellers and buyers in determining value.
4. A broker may charge a fee for the CMA/BPO/BOV, but should make it clear that it is _____.

II. VALUE

A. Market value

1. The most _____ (in terms of cash or its equivalent) that a property should bring when
 - a. a willing seller would sell and a willing buyer would buy;
 - b. the property is exposed on the open market for a reasonable time;
 - c. both parties are familiar with the property's uses, defects, and advantages; and
 - d. neither party is under abnormal pressure to sell or buy.

B. Market price

1. _____ or what someone actually paid
2. Historical fact

C. Essential elements of value (DUST)

1. _____
 - a. Desire
 - b. Affordability
2. _____ (usefulness)
 - a. Does the property fulfill a specific need?
 - b. It is subjective; based on needs and desires of a specific potential buyer.
3. _____
 - a. There is a finite supply of land.
 - b. Land in specific areas is limited (scarce).
4. _____
 - a. Must have marketable title to transfer property

III. PRINCIPLES OF VALUE

A. Highest and best use

1. The highest and best use is the use that produces the greatest return on investment over time.
2. It typically is the current use, but it could be different.
 - a. The highest and best use of a property can change over time, but there can only be one _____ at a time.
3. The appraiser must show current highest and best use in the appraisal.
 - a. It would not be included in a CMA, BPO, or BOV.

B. Anticipation

1. Future benefits determine the current value.
2. Real estate values are driven by the anticipation of future benefits.

C. Supply and demand

1. Seller's market versus buyer's market
2. Supply: number of available properties (of a certain type in a certain area)
 - a. Price moves opposite of supply; when supply goes up, price goes _____
3. Demand: number of properties that will be purchased
 - a. Price moves with demand; when demand goes up, price goes _____
4. Determines sale prices and rental rates

D. Substitution

1. Substitution is the most important principle in appraisal.
2. It is the _____ of the sales comparison approach. It is used in _____.
3. In real estate (like any commodity), the lowest price with the highest value will sell first.
 - a. The buyer considers the cost of acquiring an equally desirable substitute that meets the same criteria of time, function, and utility.
 - b. To be accurate, all approaches to value must take into consideration what the market will pay.

E. Conformity

1. Values tend to move toward surroundings.
 - a. Value is impacted when properties are different sizes or have different amenities in the same area.
2. Regression is when the value of overimproved property _____.
3. Progression is when the value of underimproved property _____.
4. Values are most stable when all properties are similar.
 - a. Example: A large house in neighborhood with small houses will not have as high a value as if it was located near other large houses.

F. Contribution

1. Contribution determines the increasing or decreasing returns on improvements.
2. The value of an improvement is not what it costs to build but what it adds to the market value of the property.
3. _____ are improvements that add more value than they cost.
4. _____ are improvements that add less value than they cost.
5. Value is determined by what the market will pay, not by the price of an improvement or the cost of installation.
 - a. A third bedroom added at a cost of \$30,000 to a two-bedroom unit might add \$50,000 in value in a particular neighborhood (increasing returns).
 - b. A swimming pool and deck added at a cost of \$75,000 might add \$40,000 in value in a particular neighborhood (decreasing returns).

G. Change—life cycle of property

1. Growth
2. Stability
3. Decline
4. Rejuvenation

IV. METHODS OF VALUATION

A. Sales comparison/market data approach

1. Key points
 - a. It is the most important method for residential property and vacant land.
 - b. The estimate of value is based on adjusted sale prices of similar properties that were recently sold.
 - i. It is similar to what brokers use to determine value when doing a CMA.
2. Square footage of improvements
 - a. Square footage is typically based on exterior dimensions of the finished, heated living area.
 - b. Square footage is often determined by local, state, or multiple listing service (MLS) guidelines.
3. Subject property
 - a. Property being appraised
 - b. Never adjust the price of the subject property
4. Comparable sales (comps)
 - a. Comparables are similar properties that recently sold.
 - b. Adjustments are always made to the sold _____ to make them similar to the subject.
 - c. The comparables with the least adjustments generally give a stronger indication of value.
 - i. In a rapidly changing market, comparables that have sold _____ and up to 12 months should be used.
5. Primary elements of comparison and adjustment
 - a. Lot size
 - b. _____ (values may be appreciating or depreciating)
 - i. Market cycles often create the need for a “time of sale” adjustment
 - c. Days on market
 - d. Amenities
 - e. Exterior dimensions of improvements (square footage)
 - f. Not the purchase price or acquisition cost of subject property

6. Adjustments are made to the _____

- Adjust comparable to make it similar to the subject
 - If comp is better than subject, _____
 - Example: The subject property has one bathroom and the comparable has two, so subtract the value of the extra bathroom from the comparable's sale price to make it match the subject property.
 - If comp is worse than subject, _____
 - Example: The subject property is a three-bedroom, two-bath, ranch-style home with a two-car garage. Based on these comparables, what is its indicated market value?

Figure 5.1: Adjusting Comparable Property Selling Prices

	Subject	Comp #1	Comp #2	Comp #3
Number of bedrooms	3	2	3	3
Number of bathrooms	2	2	1	3
Garage type	2 car	2 car	2 car	2 car
Style	Ranch	Ranch	Ranch	Ranch
Sold price	---	\$650,000	\$655,000	\$675,000
Adjustment	---	+ \$25,000	+ \$10,000	- \$15,000
Value	?	\$675,000	\$665,000	\$660,000

B. Cost approach

- Key points
 - It is the most important method for new construction and unique or _____, such as churches and schools.
 - The cost approach is typically used when comparable sales or income is lacking.
- Three steps in the cost approach
 - Estimate the cost to build the improvements if built now, which may be based on reproduction or replacement cost
 - Estimate and deduct accrued depreciation in the subject property
 - Add the value of the land
 - Land does _____, so its value must be deducted from the improvements that depreciate
 - Usually evaluated using the market data approach, and then value is added to find the final value

d. Formula: Cost to build new – accrued depreciation + land value = value

3. Cost to build new (uses only one of these methods)

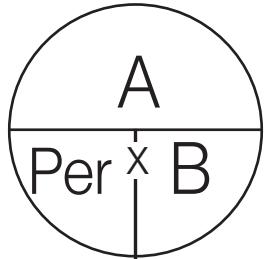
- Reproduction cost new
 - Cost to build a _____ with the same or highly similar material
 - Used for historic properties
 - Replacement cost new
 - Cost to replace improvements with the same functionality/_____

4. Accrued depreciation

- Depreciation is a _____ for any reason.
- Depreciation affects improvements, not land.
- There are three types of accrued depreciation.
 - Physical deterioration (also called obsolescence)
 - Deferred maintenance
 - _____
 - Functional obsolescence
 - Design or other inadequacies, including obsolete equipment, poor floor plan, etc.
 - Examples: outdated lighting and plumbing fixtures or a four bedroom home with one bathroom
 - _____ (also called locational obsolescence or external obsolescence)
 - External factors/location/surroundings—determined through a neighborhood analysis
 - Example: property is in a flight path from a nearby airport
 - _____

5. Appreciation and depreciation calculations

a. The following circle formula applies to any situation involving appreciation or depreciation:

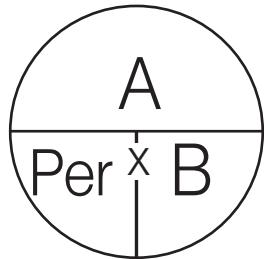


A = the value after the percent change
 B = the value before the percent change
 Per = the formula percentage

Formula percentage (Per) is:
 $100\% + \text{the gain (appreciation), or } 100\%$
 $100\% - \text{the loss (depreciation)}$

i. Note: Because Per is always 100% plus or minus something, it is never the answer to a problem. Always adjust up or down from 100% to find the value needed.

b. Question: A property purchased three years ago for \$200,000 has appreciated 16%. What is its current value?



$$\begin{aligned} \text{Per} &= 100\% + 16\% = \underline{\hspace{2cm}} \\ \text{B} &= \$200,000 \\ \text{A} &= \text{Per} \times \text{B} = 1.16 \times \$200,000 \\ &= \underline{\hspace{2cm}} \end{aligned}$$

C. Income approach

1. Key point

a. The income approach is used for properties that _____, such as an apartment building, shopping center, or residential rental property.

2. Investment properties

a. Real estate investors buy properties for the income the property produces.

b. Investors determine what they will pay based on a rate of return or _____.

c. The capitalization rate (or cap rate) for a property type in a given area can be determined by using past sales. This allows the appraiser to estimate the present value of a property that has not yet closed.

3. Capitalization

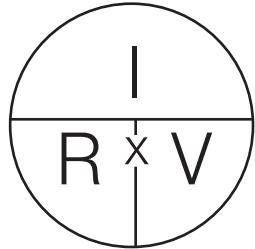
a. Process of converting estimated future income into _____

b. Calculation of future income is based on a property's annual Net Operating Income (NOI)

Potential annual gross income	\$66,000
– Bad debt (2%)	– 1,320
– Vacancy (3%)	<u>– 1,980</u>
Effective gross income	\$62,700
– Operating expenses	<u>– 29,400</u>
= Net operating income	\$33,300

c. Cash flow = I (net operating income) minus debt service
 d. Capitalization math

$$\text{Income} = \text{rate} \times \text{value}$$



$$I = \text{Net operating income (NOI)}$$

$$R = \text{Capitalization rate (investor rate of return, also affected by market forces)}$$

$$V = \text{Value (what can be paid for a property to get the expected return)}$$

Three relationships:

$$I = R \times V$$

$$R = I \div V$$

$$V = I \div R$$

V. RECONCILIATION

A. Key points

1. The appraiser reconciles (correlates) the three approaches to value (sales comparison/market data, cost, and income).
2. Each approach is weighed and used to determine a subject's estimated value. _____
3. The appraiser considers all three approaches but gives the most weight to the approach that is the most appropriate for the property type.
 - a. For a single-family property, the appraiser would give the most weight to the sales comparison approach.
 - b. For a unique property like a school, the appraiser would give the most weight to the cost approach.
 - c. For an income-producing property like an office building or shopping center, the appraiser would give the most weight to the income approach.

UNIT 5 GLOSSARY REVIEW

capitalization	functional obsolescence	replacement cost
cost approach	income approach	sales comparison
depreciate	market data approach	substitution
economic obsolescence	net operating income	value
estimate	reconciliation	wear and tear

1. The process of converting a future income stream into an expression of present value is _____.
2. The cost of replacing an improvement with another of similar quality but not an exact replica is _____.
3. Loss in value due to causes external to the property is _____.
4. A method of valuing a property by comparing the subject property to similar properties that have recently sold is the _____.
5. Demand, utility, scarcity, and transferability are essential elements of _____.
6. An appraisal is an _____ of value.
7. To obtain the value using the capitalization approach, an appraiser would divide the _____ by the capitalization rate.
8. The market data approach is based on the principle of _____.
9. An appraiser calculates accrued depreciation using the _____.
10. When an appraiser determines the accrued depreciation, outdated plumbing fixtures would be considered _____.
11. The market data approach is also known as _____.
12. The step in which the appraiser weighs all approaches to determine a final value is _____, which is also called correlation.
13. An appraiser determining the value of a shopping center would use the _____.
14. An example of physical deterioration (also called physical obsolescence) is _____.
15. For appraisal purposes, land does not _____.

UNIT 5 QUIZ

1. Which approach should be used to appraise a 12-year-old, single-family home in a residential neighborhood?
 - A. Sales comparison approach
 - B. Cost approach
 - C. Income approach
 - D. Gross rent multiplier method
2. A property that has a net operating income of \$18,000 and a value of \$200,000 would have a rate of return (capitalization rate) of
 - A. 6%.
 - B. 8%.
 - C. 9%.
 - D. 10%.
3. Which appraisal method considers the cost to build a replacement for the improvements?
 - A. Income approach
 - B. Market data approach
 - C. Cost approach
 - D. Comparison approach
4. A five-bedroom home with one bath is an example of
 - A. functional obsolescence.
 - B. physical deterioration.
 - C. economic obsolescence.
 - D. gross rent adjustment.
5. All of these are examples of obsolescence *EXCEPT*
 - A. neighborhood decline.
 - B. an impractical floor plan.
 - C. a two-story home with one bathroom located in the basement.
 - D. a leaky roof.
6. Reproduction cost is defined as
 - A. the current cost to rebuild with the same or highly similar materials.
 - B. replacing an improvement with another that has the same utility.
 - C. the cost determined by capitalization rate and value.
 - D. none of these.
7. An appraiser would *MOST* likely rely on the cost approach when appraising a
 - A. single-family home.
 - B. duplex.
 - C. church.
 - D. town house.
8. Income capitalization is *MOST* likely to be associated with the appraisal of
 - A. a condominium project.
 - B. a single-family home.
 - C. an apartment building.
 - D. a town house.
9. In the market data approach, adjustments to the comparables would be made for all of these *EXCEPT*
 - A. number of baths.
 - B. square footage.
 - C. time of sale.
 - D. capitalization.
10. The purpose of capitalization is to estimate
 - A. present value based on current or expected income.
 - B. future value based on current gross income.
 - C. present value by multiplying net income by the rent multiplier.
 - D. operating expenses based on the highest and best use.
11. Which principle of value underlies all three approaches to value?
 - A. Change
 - B. Substitution
 - C. Regression
 - D. Aggression
12. A building valued at \$195,000 has a gross income of \$27,000 and expenses of 45%. What is its cap rate?
 - A. 6.2%
 - B. 7.6%
 - C. 13.8%
 - D. 45%

13. While writing an appraisal report based on the cost approach, an appraiser referred to "replacement cost new." This is the present cost of replacing the subject improvement with another that
 - A. has the same function and utility.
 - B. uses the same or highly similar materials.
 - C. was built on a similar lot.
 - D. was built in the same year as the subject property.
14. A salesperson has done a BPO for a bank. The salesperson must make sure that the bank understands that
 - A. the opinion is not an appraisal.
 - B. because the salesperson cannot be paid for the opinion, the bank is obligated to list the property with the salesperson.
 - C. the opinion is comparable in scope to an appraisal.
 - D. the opinion is equal to an appraisal and the salesperson will be paid the same as an appraiser.
15. A broker performed a competitive market analysis and determined that the comparable homes are in better overall condition than the seller's property. What adjustments should be made?
 - A. The sales prices of the comparables should be adjusted upward.
 - B. The sales price of the subject should be adjusted upward.
 - C. The sales prices of the comparables should be adjusted downward.
 - D. The listing price of the subject should be the assessed value.
16. Which appraisal method depends on an accurate estimate of the value of the accrued depreciation?
 - A. Reproduction approach
 - B. Market data approach
 - C. Cost approach
 - D. Income approach
17. Which of the following is used to determine the gross rent multiplier?
 - A. Income divided by rent received
 - B. Adjustment to comparable sales
 - C. Sales price and rental rates
 - D. Estimated replacement cost minus depreciation
18. All of the following are essential elements of value *EXCEPT*
 - A. utility.
 - B. scarcity.
 - C. demand.
 - D. profitability.
19. If the demand for a particular housing style increases, the principle of supply and demand indicates
 - A. the price will likely decrease.
 - B. the supply will immediately increase.
 - C. the price will likely increase.
 - D. affordability will prohibit any change in price.
20. When an appraiser uses more than one method to estimate value, the process used to arrive at the single final estimate is called
 - A. averaging.
 - B. regression.
 - C. reconciliation.
 - D. capitalization.
21. Progression and regression are part of which principle of value?
 - A. Conformity
 - B. Change
 - C. Substitution
 - D. Contribution
22. An appraiser estimating depreciation is using which approach to value?
 - A. Cost
 - B. Income
 - C. Market data
 - D. Capitalization
23. An appraiser reviewing comparables is using which approach to value?
 - A. Cost
 - B. Income
 - C. Sales comparison
 - D. Gross rent multiplier
24. A broker determined that if the seller will spend \$4,000 in upgrades, the value of the property will increase by \$6,000. Which principle of value did the broker use to make this determination?
 - A. Conformity
 - B. Change
 - C. Substitution
 - D. Contribution

25. Market value is the

- same as market price.
- actual closed price.
- market price minus sales price.
- most probable price.

26. The monthly GRM is 120. The annual income is \$24,000. What is the value of the property?

- \$24,000
- \$240,000
- \$288,0000
- \$2,888,000

27. The formula used in the cost approach is

- land minus depreciation plus cost to build new.
- cost to build new minus land plus depreciation.
- cost to build new minus depreciation plus land.
- sales price minus land and cost to build new plus depreciation.

28. An appraisal is used to determine which of the following?

- Probable sales price
- Assessed value
- List price
- Market price

29. The subject property has five bedrooms and three-and-a-half bathrooms. Which of the following comparables would have to make a deduction from the sales price?

- Comparable 1 has four bedrooms and three bathrooms.
- Comparable 2 has no air-conditioning or fireplace.
- Comparable 3 is in a better condition.
- Comparable 4 has the same square footage but no patio.

30. What does BPO stand for?

- Best professional opinion
- Biggest political operative
- Building prospective offers
- Broker price opinion

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 5 Glossary Review Answer Key

1. capitalization
2. replacement cost
3. economic obsolescence
4. market data approach
5. value
6. estimate
7. net operating income
8. substitution
9. cost approach
10. functional obsolescence
11. sales comparison
12. reconciliation
13. income approach
14. wear and tear
15. depreciate

Unit 5 Quiz Answers

1. **A** The sales comparison approach is the most important approach for the appraisal of single-family residences.
2. **C** The net operating income (\$18,000) divided by the value (\$200,000) equals a rate of return of 0.09 or 9%.
3. **C** The cost approach estimates the replacement cost, subtracts depreciation from all sources, and adds the value of the land to arrive at an estimate of value.
4. **A** Inadequate design or equipment is functional obsolescence.

5. **D** A leaky roof is an example of physical deterioration (not functional or economic obsolescence)
6. **A** Reproduction cost is the cost of building a replica.
7. **C** The cost approach is most often used for unique or special purpose properties (e.g., churches and schools).
8. **C** Income capitalization (the income approach to value) is used to appraise income-producing properties (e.g., office buildings, shopping centers, and apartment buildings).
9. **D** The appraiser does not consider the original cost of the property.
10. **A** Capitalization is the process by which present value is estimated based on expected income.
11. **B** The principle of substitution states that buyers would not pay more for a property than they would have to pay to acquire a similar substitute property.
12. **B** $\$27,000 \text{ (gross income)} \times 45\% \text{ or } 0.45 \text{ (expenses)} = \$12,150 \text{ expenses}$
Gross income – expenses = net income
 $\$27,000 - \$12,150 = \$14,850$
Net income ÷ property value = cap rate
 $\$14,850 \div \$195,000 = 0.076 \text{ or } 7.6\% \text{ cap rate}$
13. **A** Replacement cost new is the present cost of replacing the subject improvement with another having the same function and utility, using current construction standards and costs.
14. **A** A salesperson completing a BPO may be paid but must make sure the receiver (in this case, the bank) knows the opinion is not an appraisal.

15. **C** Adjustments are always made to the comparables. If the comparable is superior to the subject, the sales price of the comparable is adjusted downward.

16. **C** In the cost approach, the appraiser must estimate the accrued depreciation to be subtracted from the replacement cost of the improvements.

17. **C** Divide the sales price by the rental rates to determine the gross rent multiplier.

18. **D** The essential elements of value are utility, scarcity, demand, and transferability (USDT).

19. **C** When demand increases, it causes prices to increase.

20. **C** In reconciliation, the appraiser uses professional judgment to weigh the alternative values and estimate the best value for the subject property.

21. **A** Conformity uses progression and regression.

22. **A** Depreciation is used in the cost approach to value.

23. **C** Comparables are used in the market data or sales comparison approach.

24. **D** Contribution through increasing and decreasing returns will reveal whether upgrades will add more value than they cost.

25. **D** Market value is the most probable price a property will bring. Market price is the actual sales price.

26. **B** To determine value, the monthly GRM is multiplied by the income, which must be converted to a monthly figure: $120 \times (\$24,000 \div 12) 120 \times \$2,000 = \$240,000$.

27. **C** The formula used in the cost approach is the cost to build new minus depreciation plus land.

28. **A** An appraisal estimates market value, which is the probable sales price a property will bring in an open market.

29. **C** The condition of comparable 3 is better than the subject, so it needs to be adjusted downward to make it similar to the subject. The other comparables would need to be adjusted upward.

30. **D** BPO stands for broker price opinion. It is typically offered by real estate licensees in distressed property sales to determine whether the seller is underwater, or owes more money on the property than it is worth.

UNIT 6

Financing, Mortgages, Deeds of Trust, Lending Practices, and Loan Programs

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **differentiate** between commonly used financing documents and **explain** their special provisions;
- › **recall** the types of foreclosures and **summarize** a typical foreclosure process;
- › **list** the types of loans and **explain** when they are typically used;
- › **distinguish** between conventional, government, and private loan programs available for real estate financing; and
- › **discuss** the sources of real estate funding.

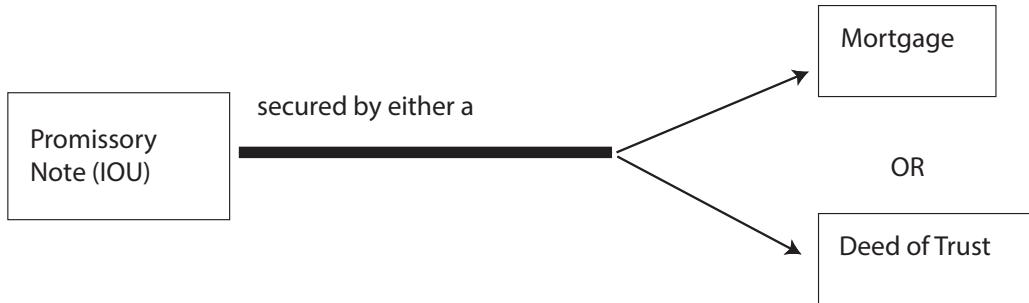
KEY POINTS—UNIT 6

- A promissory note is a written promise to repay a debt. A promissory note for a real estate loan is almost always accompanied by a mortgage or deed of trust on the property.
- Loans to buy real estate are generally secured by a deed of trust. This instrument creates a lien against the property, allowing the lender to foreclose in case the loan is not paid as promised.
- A deed of trust or a mortgage is a security agreement (contract) that makes real property security for a loan. It creates a lien on the property. If the borrower doesn't repay as agreed in the promissory note, the security agreement gives the lender the right to foreclose on the property.
- When a mortgage is paid in full, a satisfaction of mortgage is used to release the mortgage lien. A reconveyance deed is used to release a deed of trust.
- The loan-to-value (LTV) ratio that a lender applies determines the maximum loan amount for a transaction. The loan-to-value ratio is based on the appraised value or sales price of the property, whichever is less.

- A lender charges discount points to increase the yield on the loan. The points are paid at closing by either the buyer or the seller. One point is 1% of the loan amount.
- Equity is the difference between the value of a property today and the debt against the property today.
- Most foreclosure laws are created at the state level. In California, the most common foreclosure process is called “private sale” foreclosure and begins when the lender files a notice of default and then the borrower is given a period of time to repay the debt. If the borrower cannot clear the default, the property goes to sale. The sale can remove most liens against the property. The winner of the bid then has the right to obtain title to the property.
- A straight or term note is a loan in which interest-only payments are made during the term, with the full amount of the principal due at the end in a balloon payment. With an amortized note, payments include both principal and interest. If a note is fully amortized, the entire principal amount and all of the interest will be paid off within the agreed loan period.
- With a fully amortized loan, the interest rate and the amount of the payment remain the same throughout the term of the loan. But there are a variety of alternative repayment plans, such as adjustable-rate mortgages (ARMs).
- In some transactions, a seller will participate in providing financing to the buyer. This seller carryback loan may be a second priority loan for part of the purchase price. Loans of this type are sometimes referred to as a purchase money mortgage from the seller.
- An alternative form of seller financing, usually for the entire purchase price, is an installment land contract or contract for deed. In this type of financing, the seller (vendor) retains legal title until the entire amount is paid and delivers a deed at the end of the agreed payment. The buyer (vendee) receives equitable title and possession of the property while paying the loan. The Cal-Vet program uses this type of loan arrangement.
- Leverage is using someone else’s money (borrowed money) to purchase real estate. The higher the debt, the higher the leverage, the higher the risk of default, and the lower the down payment.
- A conventional loan is a mortgage loan that is not insured or guaranteed by a government agency. Conventional loans may require private mortgage insurance (PMI), depending on the loan-to-value ratio.
- The Federal Housing Administration (FHA) is part of the Department of Housing and Urban Development (HUD). It provides home mortgage insurance, insuring approved lenders against losses resulting from default and foreclosure on FHA-insured loans.
- The Department of Veterans Affairs (VA) guarantees repayment of certain residential loans made to eligible veterans. Eligibility for VA loans is based on the length of service in the U.S. armed forces.
- The primary or local market is the ground-level money market, where lenders make loans to borrowers. In the secondary or national market, private investors and government-sponsored agencies buy and sell real estate mortgages. This helps to provide funds to the primary market, and moderate the effects of local economic conditions and real estate cycles, by transferring money from areas where there is a surplus of loan funds to areas where there is a shortage. Government-sponsored secondary market agencies include Fannie Mae, Ginnie Mae, and Freddie Mac.

I. FINANCING DOCUMENTS

Figure 6.1: Securing a Promissory Note



A. Title theory (trust deed) versus lien theory (mortgage)

1. In California, the trustor (borrower) gives legal title to the trustee using a trust deed (the favored loan document in California) and retains equitable title. Legal title is returned to the trustor only when the debt is paid in full (or some other obligation is performed). This gives the beneficiary (lender) the indirect ability (through the trustee) to sell the property if the borrower defaults on the loan.
2. In lien theory states, the mortgagor (borrower) retains both legal and equitable title. The mortgagee (lender) simply has a lien on the property as security for the mortgage debt and may be required to go through a court action to force the sale of the property in the event of default.
 - a. The mortgage or deed of trust is nothing more than security for the loan.
3. Whether a mortgage or deed of trust is used, the function is the same: to act as security for the promissory note by making the real property collateral for the debt.
4. California uses nonjudicial foreclosure (also known as power of sale); those using mortgages use either nonjudicial or a judicial foreclosure process.

B. Promissory note

Figure 6.2: Promissory Note

Promissory Note	
Date and address	_____, 20_____, (insert city and state) _____ (Property Address)
Promise to pay amount of debt	In return for a loan that I have received, I promise to pay \$100.00, plus interest, to the order of the Lender.
Lender name	The Lender is ABC Lending.
Assignment clause	The Lender, or anyone who takes the Note by transfer and is entitled to receive payments under this Note, is called the “Note Holder.”
Interest rate and amortization	Interest will be charged on unpaid principal at a yearly rate of 6%. My monthly payments will be in the amount of \$600.00.
Terms of repayment	I will make my monthly payments on the 1st day of each month beginning on _____. I will make these payments every month until all of the principal and interest has been paid.
Balloon clause	If, on _____ (the maturity date), I still owe amounts under this Note, I will pay those amounts in full on that date.
No prepayment penalty clause	I have the right to make payments of principal at any time before they are due. I may make a full prepayment or partial prepayment without paying any prepayment penalty.
Late charge	If the full amount of any monthly payment has not been received within _____ days after it is due, I will pay a late charge of _____ % of my overdue payment.
Standard allocation	Each payment will be applied first to interest then due, with the remainder applied to the principal.
Acceleration clause	If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me. If I have been required to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its expenses in enforcing this Note, which may include reasonable attorney’s fees.
Security instrument	This Note is secured by a _____ mortgage or _____ deed of trust in favor of _____ executed on the same date as this Note. _____ (Borrower)

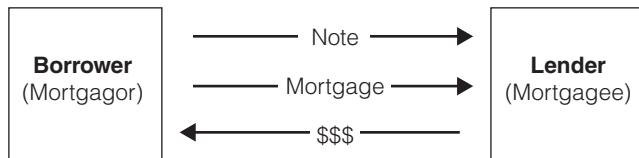
1. Legal instrument that _____ that is secured by the mortgage or deed of trust
2. Held by lender until loan is fully repaid

3. Key elements
 - a. Personal promise of borrower to repay a fixed amount
 - b. Terms of repayment
 - c. Signature of borrower; lender does not sign
4. Special provisions
 - a. The promissory note has an acceleration clause.
 - i. If the borrower _____, the lender can demand immediate payment of the _____.
 - b. A promissory note alone does not create a lien on a property.
 - c. Most real estate notes are negotiable and transferable, which allows them to be sold.

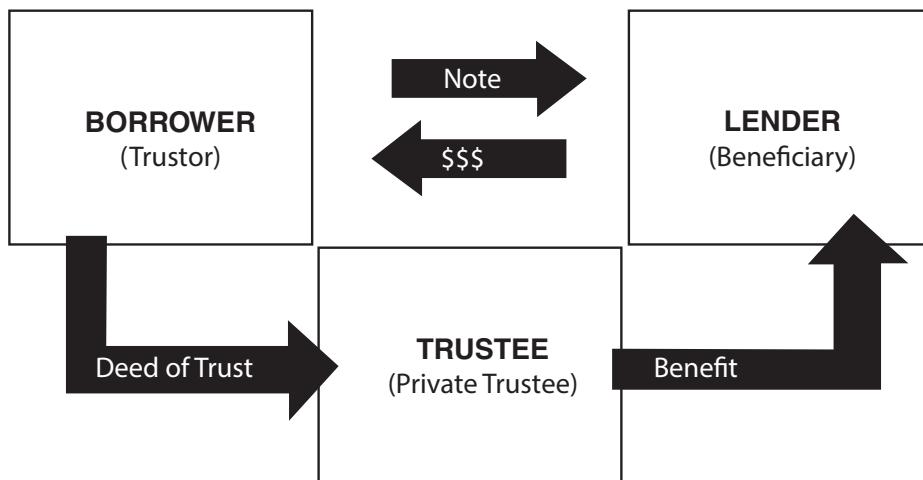
C. Mortgage or deed of trust (security instruments)

1. Instruments that pledge (hypothecate) property as security for a debt
2. Mortgage or deed of trust creates a lien
 - a. Creates payment obligation to pay off principal and interest
 - b. Interest on the majority of home loans is _____, not compounded
3. Allows for foreclosure if borrower defaults on the note
4. Mortgage: two-party instrument
 - a. Borrower is the _____ who gives the mortgage to the lender
 - b. Lender is the _____ (see Figure 6.3)

Figure 6.3: Mortgage



5. Deed of trust: three-party instrument (_____)
(see Figure 6.4)
 - a. Borrower is the trustor
 - b. Lender is the _____ (benefits from the trust)
 - c. Trustee—a third party who is conveyed the legal title to the property by the trustor

Figure 6.4: Deed of Trust**D. Provisions of a mortgage/deed of trust**

1. Defines the rights and obligations
2. Acceleration clause—lender may demand full payment in case of default
3. Defeasance clause—when debt is paid (mortgage/deed of trust), lien must be removed
 - a. Mortgagee provides “satisfaction”
 - b. Trustee provides “deed of reconveyance”
 - c. Satisfaction or reconveyance deed removes lien and should be recorded by borrower
4. _____—also called alienation clause
 - a. Provides that when the property is _____, the lender may demand immediate repayment of entire debt
5. Power of sale clause—optional provision in mortgages that is allowed in California; standard in deeds of trust
 - a. Gives the trustee/mortgagee the power to foreclose without going to court (nonjudicial)

E. Reasons for loan acceleration and foreclosure

1. Nonpayment of principal and interest
2. Nonpayment of taxes
3. Removal of improvements without lender's permission
4. Insurance coverage lapse

5. _____ —would include deferred maintenance that lowers value below what is owed
6. Alienation without consent (if there is a due-on-sale clause)

II. MISCELLANEOUS MORTGAGE TERMS

A. Loan-to-value ratio (LTV)

1. Also called a mortgage ratio
 - a. Determines how much money can be borrowed and if private mortgage insurance will be needed
2. Maximum percentage of value that the lender will loan to the borrower in a particular transaction
3. Sales price or appraised value (whichever is lower)

B. Equity

1. Market value today

= Equity

C. Leverage

1. Leverage refers to the effect of using borrowed money to finance an investment.
 - a. The higher the loan-to-value ratio (the more money borrowed), the higher the leverage.
 - b. The disadvantage of high leverage is the greater risk of default on the loan (lower equity equals higher risk).
 - c. The advantage of leverage is being able to control a large asset with little cash investment.

D. Discount points

1. One point = 1% of the loan amount
 - a. Example: 1 point would reduce the rate of a 30 year loan by $\frac{1}{8}\%$
2. Paid to the lender to lower the interest rate on the loan
3. Lender charges points to _____
4. Paid by buyer or seller at closing

E. Loan origination fee

1. A charge by the lender to process and issue a loan

F. Usury

1. Usury is charging an interest rate in excess of what is permitted by law.

III. FORECLOSURE**A. Key points**

1. Foreclosure is a procedure whereby title to property used as security for a debt is taken by a creditor/lender and _____.
 - a. The foreclosure process removes _____ from the property.
2. The types of foreclosures include the following:
 - a. Foreclosure by judicial (legal) action
 - b. Nonjudicial foreclosure

B. Judicial foreclosure

1. Lawsuit to obtain the power to sell from a court
2. Lis pendens (Latin for “legal action pending”) is filed with county recorder to give public notice that a lawsuit has been filed with the subject matter being the real property. It makes it more difficult for the owner to sell the property.

C. Nonjudicial foreclosure

1. Trustees and mortgagees may be given the authority to hold a foreclosure auction without going to court.
2. The mortgage or deed of trust must have a power of sale clause.

D. Foreclosure sale process

1. Equitable reinstatement period: right to stop foreclosure
 - a. Borrower cures by paying _____, plus interest and penalties
 - b. Time period
 - i. The _____ period in a nonjudicial foreclosure process using a trust deed is a minimum of three months and 15 days.
 - The redemption period is the last five days immediately preceding the sale. If the borrower pays off the entire loan amount plus penalties, costs, and charges, the property will not be sold. There is _____ in the private sale process (trustee’s sale).

- ii. The reinstatement period in a judicial foreclosure is up until the foreclosure judgment is issued by the court.
 - The redemption period is from the issuance of the judgment until either three months or one year after the sale, depending upon whether the lender can obtain a deficiency judgment.

2. Foreclosure sale
 - a. Lender sends a demand to foreclose.
 - b. Property is sold to the highest bidder at a public auction.
 - c. Excess sale proceeds belong to the borrower/trustor.
 - d. Insufficient sale proceeds may result in a _____ judgment to the lender.

IV. DEED IN LIEU OF FORECLOSURE AND SHORT SALE

A. Deed in lieu of foreclosure (alternative to foreclosure)

1. The borrower deeds to the lender to avoid foreclosure.
2. _____.
3. The lender may not be willing to accept.
4. If the property has junior liens, the lender takes title subject to these liens.

B. Short sale

1. A short sale occurs when the borrower needs to sell the property and the market value of the collateral property is insufficient to satisfy the loan balance.
2. The broker lists the property for sale for less than what is owed on the loan.
3. Once an offer is accepted, the lender may or may not agree to accept the reduced (deficient) price.
4. The lender may require the seller to pay any deficiency, and the seller may have tax consequences.

V. METHODS OF PRINCIPAL AND INTEREST PAYMENT

A. Term (straight) loan

1. _____ payments until maturity or at end of term
2. Entire principal paid back in one lump sum _____ payment

B. Partially amortized (balloon) loan

1. Equal payments of principal and interest
2. Lump sum balloon payment

C. Fully amortized loan – fixed rate

1. Equal consecutive installments of principal and interest
2. Balance decreases with each payment
3. Balance becomes zero at maturity

Figure 6.5: Loan Types

Loan Type	\$ Payment	Balloon	Term
Term loan	Small: interest only	Large: full principal	Short: 6 months to 2 years
Partially amortized	Bigger: principal and interest	Medium: balance of principal	Relatively short: 1 to 5 years
Fully amortized	Large: enough to pay in full	None	Larger: 15 to 30 years

D. Adjustable-rate mortgage (ARM)

1. Interest rate subject to change based on economic index or indicator
2. Index + margin = rate
3. May include annual adjustment caps and/or lifetime rate caps

E. Package mortgage

1. Real property plus personal property
 - a. Example: furnished condominium

F. Blanket mortgage

1. Typically used by developers
2. More than one parcel pledged
3. Partial release clause allows individual parcels to be released from lien as balance is paid down
4. Payment for releases are not necessarily in equal amounts (i.e., first property sold will have a larger payment amount, increasing owner's equity)

G. Construction loan

1. Interim financing made available in installments (obligatory advances) as improvements are completed

2. Typically adjustable-rate/short-term loans
3. Lender may require a commitment for “take out”

H. Reverse mortgage for seniors (was called a reverse annuity)

1. _____
 - a. Lender pays borrower monthly payments of principal with each disbursement
 2. Allows seniors to tap into equity in their homes without selling
 3. Repaid upon death of mortgagor, sale of property, or when the balance reaches the maximum limit

I. Home equity loan

1. The Truth in Lending Act (Regulation Z) requires all home equity loans to have a _____.
2. The owner borrows against the equity in the home.
 - a. The borrower receives a check for the full amount borrowed.
 3. A home equity line of credit (HELOC) allows the borrower to obtain further advances at a later date.
 - a. Future advances are limited to the difference between the original loan amount and the current amount owed.

VI. SUBPRIME AND PREDATORY LENDING

A. Subprime loans

1. In subprime loans, a higher-than-prime rate is charged because the borrower and/or property used as security is a _____ than a prime borrower (e.g., prime rate might be 6% while subprime is 8%).
2. Subprime loans often include flexible-rate loans (i.e., ARMs) that adjust beyond the borrower's ability to pay.
 - a. The borrower qualifies at a lower rate and once the rate adjusts up, the borrower is at risk of foreclosure.
 - b. Mortgage brokers and bankers receive higher fees on these loans.
3. Subprime loans were packaged with prime loans and sold to investors on the secondary market.

B. Predatory lending

1. *Predatory lending* is an umbrella term for unfair or illegal lending practices.
 - a. Most often, this type of lending occurred in the subprime market.
2. Groups that are targeted include the elderly, minorities, those who are less educated, and persons who do not speak English as their first language.
3. Predatory practices include the following:
 - a. Making loans to borrowers who have no ability to repay
 - b. Urging borrowers to refinance repeatedly, when it is not in the best interest of the borrower
 - c. Originating loans with high prepayment penalties
 - d. Using one set of terms at application and pressing the borrower to accept higher terms at closing
 - e. Offering loans with low monthly payments and a high balloon payment at the end (e.g., an interest-only loan for 30 years)
 - f. Offering only subprime rates to borrowers who qualify for prime rates and terms
4. Many states now have predatory lending laws and require lenders and originators to be licensed.
5. Subprime loans were often coupled with “down payment assistance” (a second mortgage) so borrowers did not make down payments on their loan, which made them more likely to default.
 - a. Example: subprime loan: 80% LTV
 - i. Down payment (second mortgage): 20% LTV
 - ii. Total loan: 100% with no money from the borrower

VII. SELLER FINANCING**A. Purchase money mortgage**

1. A purchase money mortgage is also called a seller-carry second or “seller carry back.”
2. It usually uses a promissory note and deed of trust or mortgage. Title transfers to the buyer, and the seller “takes back” a lien at closing. The seller becomes the lender.

B. Contract for deed

1. A contract for deed is also known as a _____ contract or an _____ contract.
2. The purchase price is paid in installments to the seller and the seller delivers a deed when the final payment is made.
 - a. It is most beneficial to the seller because the seller holds title and may benefit if the buyer defaults.

3. The buyer or purchaser of real property in this type of agreement is referred to as the vendee and the seller is called the vendor.

C. Licensee's role

1. With seller financing, real estate professionals should make sure both the seller and the buyer understand the risks that may be involved.

VIII. CONVENTIONAL LOANS

A. Conventional mortgages

1. Debt repayment is based solely upon the borrower's ability to repay; these loans are not insured or guaranteed by the government.
2. The LTV can be up to 80%.

B. Insured conventional mortgages

1. A buyer (borrower/mortgagor) pays PMI when the LTV is above _____.
2. Private mortgage default insurance protects lenders from loss due to a deficiency, which would occur after a foreclosure.
 - a. PMI does not _____.
 - i. PMI covers the shortfall between the amount obtained by the foreclosure and the outstanding mortgage debt.
 - b. It gives lenders additional coverage along with the right to foreclose and take the property.
 - i. Example: A borrower gets a 95% loan with PMI. If the borrower defaulted, the lender would be protected for the 15% difference between 95% and 80%.
 - c. The advantage for the borrower is a _____.
3. A borrower with an LTV below 80% may obtain an uninsured conventional loan because the chance of default is much less.

IX. GOVERNMENT FINANCING PROGRAMS

A. FHA-insured loan program (Federal Housing Administration)

1. FHA provides its own mortgage default insurance, Mutual Mortgage Insurance (MMI).
 - a. It _____ due to borrower default.
 - b. A mortgage insurance premium, which insures the entire loan balance, is paid by the borrower in cash or financed and paid monthly.

2. Loan funds come from approved lenders, not FHA.
 - a. Interest rates are set by lenders, not FHA.
 - b. The properties must be _____.
3. FHA traditionally has permitted a _____ than conventional mortgage loan programs.
4. There is no prepayment penalty.
 - a. Loan payoff will be based on the original loan terms.
5. The purchase agreement must contain an escape clause (contingency clause) that offers a refund provision.
 - a. If the loan cannot be obtained, the buyer can cancel.
6. The loan is always assumable (no due-on-sale clause). The conditions depend on the date of loan origination.
 - a. The lender's approval is required for assumption of loans originated since 1989.
 - i. An assumption will not need an appraisal.

B. VA-guaranteed loan program (Department of Veterans Affairs)

1. The VA _____ lenders against losses on loans to eligible veterans.
 - a. Eligible veterans: active National Guard members, veterans, or retired military reserve members
 - i. Does not include _____
 - b. No insurance premium
 - c. Has a funding fee that can be financed
 - d. No prepayment penalty or due-on-sale clause allowed
2. The veteran _____ the property as a home.
3. No down payment is required and the loan-to-value ratio can be up to _____.
4. VA requires the following two certificates:
 - a. Certificate of _____
 - b. Certificate of reasonable value (CRV)
5. The purchase agreement must contain an escape clause.

6. Lender's approval is required for assumption of loans made since 1988.
7. Non-veterans may assume a VA-guaranteed loan.

C. Real estate professionals' responsibilities

1. Real estate professionals should disclose to all parties in the transaction if the borrower cannot qualify.
2. Real estate professionals should give appropriate cautions so the buyer understands the obligations owed to the lender.

X. INFLUENCES ON AND SOURCES FOR REAL ESTATE LOANS

A. The Federal Reserve

1. Regulates the supply of money and interest rates in the United States

B. Primary mortgage market

■ Where loans are made to borrowers

1. Mortgage bankers provide financing; they are _____.
2. _____ solicit borrowers and lenders.
 - a. _____.

C. Secondary mortgage market

■ Where loans are bought and sold by mortgagees to mortgagees (lenders)

1. Secondary market activities
 - a. In the primary market, _____.
 - b. In the secondary market, _____ mortgages are bought from banks to provide capital to the primary mortgage and lending process.
 - c. The secondary market is also where mortgage-backed securities are sold to investors.
 - d. If their mortgage is sold on the secondary market, borrowers may be directed to _____ or company, but their loan terms do not change.
2. Three main organizations
 - a. Fannie Mae (Federal National Mortgage Association): government-sponsored corporation that _____ of mortgages
 - b. Ginnie Mae (Government National Mortgage Association): agency within HUD that backs FHA and VA mortgages

- c. Freddie Mac (Federal Home Loan Mortgage Corporation): government-sponsored corporation that mainly buys conventional mortgages from savings and loan associations (S&Ls) and commercial banks
- 3. Conforming and nonconforming loans
 - a. A conforming loan meets the standards of Fannie Mae and Ginnie Mae and can be readily sold in the secondary market.
 - b. A nonconforming loan, such as a “jumbo loan” that is larger than Fannie Mae standards, may be more difficult to sell on the secondary market.

UNIT 6 GLOSSARY REVIEW

acceleration clause	evidence of the debt	purchase money
balloon	Fannie Mae	mortgage
blanket mortgage	FHA	reinstatement
certificate of eligibility	fully amortized loan	term loan
equity	package mortgage	trustor
		VA

1. The borrower's right to cure the default and stop the foreclosure sale is _____.
2. A mortgage pledging personal property as well as real property as security for a debt is a _____.
3. The clause that appears in both the note and the mortgage that allows the lender to demand immediate payment of the entire debt if the borrower defaults is an _____.
4. A loan that is repaid in one single lump sum at the end of its life is called a straight loan or _____.
5. A loan in which payments are scheduled so the entire principal balance is repaid by the maturity date is a _____.
6. A final payment that is larger than preceding payments is a _____ payment.
7. A _____ is used when more than one property is pledged as security for a single loan.
8. A mortgage given by the purchaser to the seller in partial payment for the property is a _____.
9. The difference between a property's market value and the debts against it is _____.
10. The document that shows a veteran has the right to purchase a home using a VA loan is a _____.
11. A government-sponsored secondary mortgage market organization that buys both conventional and government loans from primary lenders is _____.
12. An agency of the federal government that guarantees loans made to veterans is the _____.
13. A government agency that insures (but does not make) mortgage loans is the _____.
14. A promissory note is _____.
15. In a trust deed loan, a borrower is referred to as a _____.

UNIT 6 QUIZ

1. The right of the borrower to reclaim the property before the foreclosure sale is the
 - A. right of first refusal.
 - B. equitable redemption.
 - C. riparian right.
 - D. statutory right of redemption.
2. Principal is defined as the
 - A. total amount paid to the lender over the life of the loan.
 - B. amount each payment is first applied to.
 - C. total interest and loan amount.
 - D. total amount of the loan.
3. A builder purchased 50 lots that are being used as collateral in a loan that contains a partial release clause. Which type of loan did the builder obtain?
 - A. Blanket loan
 - B. Package loan
 - C. Purchase money mortgage
 - D. Reverse loan
4. Owners' equity in their property is *BEST* described as the
 - A. difference between the current market value and the amount owed.
 - B. difference between the original purchase price and the amount owed.
 - C. current market value of the property.
 - D. total outstanding debt against the property.
5. The clause that appears in both the promissory note and the deed of trust that allows the lender to call the balance due and payable in full upon default is known as the
 - A. due-on-sale clause.
 - B. satisfaction clause.
 - C. acceleration clause.
 - D. alienation clause.
6. The figure used by the lender in determining the maximum loan amount to borrow is the
 - A. purchase price or appraised value, whichever is less.
 - B. appraised value minus the purchase price.
 - C. purchase price.
 - D. assessed value.
7. Charging an interest rate that exceeds the legal maximum ceiling is known as
 - A. defeasance.
 - B. usury.
 - C. subordination.
 - D. a violation of Regulation Z.
8. A court-supervised foreclosure resulting from a lender's lawsuit is known as
 - A. cancellation.
 - B. strict foreclosure.
 - C. nonjudicial foreclosure.
 - D. judicial foreclosure.
9. The document that is recorded to give notice that a deed of trust has been paid in full is the
 - A. defeasance.
 - B. subordination agreement.
 - C. note.
 - D. reconveyance deed.
10. In a foreclosure, if there are insufficient proceeds, the lender may file a
 - A. default judgment.
 - B. deficiency judgment.
 - C. declaration.
 - D. right to cure.
11. The clause in a mortgage that requires the loan to be repaid when the property is sold is the
 - A. acceleration clause.
 - B. defeasance clause.
 - C. subordination clause.
 - D. alienation clause.
12. The document that creates security for a promissory note is a
 - A. deed of trust.
 - B. contract for deed.
 - C. warranty deed.
 - D. quitclaim deed.
13. Which type of loan requires interest-only payments until maturity of the principal?
 - A. Blanket loan
 - B. Amortized loan
 - C. Term loan
 - D. Partially amortized loan

14. Which of the following is *TRUE* of a promissory note?

- It is the same as a deed of trust.
- It is a promise to pay.
- It is security for the deed of trust.
- It is attached to a deed.

15. Three properties are each valued at \$120,000. The first property has a loan of \$95,000, the second has a loan of \$60,000, and the third has no liens. The property with the highest leverage is

- the one with no liens.
- the one with the \$60,000 loan.
- the one with the \$95,000 loan.
- both properties with loans.

16. Which type of loan is also referred to as an interest-only loan or term loan?

- Blanket
- Construction
- Straight
- Partially amortized

17. A buyer just found out that she cannot assume the loan on the property she is purchasing. Which clause indicated to the buyer that the loan was *NOT* assumable?

- Acceleration
- Alienation
- Defeasance
- Prepayment

18. FHA insurance is designed to protect the

- mortgagor.
- lender.
- seller.
- broker.

19. A 100% loan-to-value ratio is a feature of many

- FHA-insured loans.
- VA-guaranteed loans.
- conventional loans.
- conventional guaranteed loans.

20. The primary function of the secondary mortgage market is to

- grant new loans.
- supply funds to the primary market.
- purchase contracts for deed.
- insure mortgages.

21. Which entity offers VA and FHA loans to borrowers?

- VA or FHA approved lenders
- VA or FHA, depending on which loan is chosen
- HUD
- Any local bank or mortgage broker

22. A loan in which the interest rate is subject to change based on an economic index is a(n)

- adjustable-rate mortgage (ARM).
- change rate mortgage (CRM).
- adjustable-type mortgage (ATM).
- none of these.

23. The clause in a blanket mortgage that allows individual parcels to be released from the lien as the balance is paid down is called the

- paydown clause.
- acceleration clause.
- partial release clause.
- partial reconveyance clause.

24. In a reverse mortgage, the

- payor pays the payee.
- trustor pays the trustee.
- mortgagor pays the mortgagee.
- mortgagee pays the mortgagor.

25. Which loan allows the borrower to obtain further advances at a later date?

- Home Equity Loan Program (HELP)
- Home equity line of credit (HELOC)
- Future Advances Limited Loan (FALL)
- This type of loan is not available in the current marketplace

26. An umbrella term for unfair or illegal lending practices is

- predatory lending.
- rip-off loans.
- fraudulent loans.
- liar loans.

27. The type of financing document in which the purchase price is paid in installments to a seller and the seller delivers a deed when the final payment is made is called a

- contract for deed.
- land contract.
- installment contract.
- all of these.

28. An insured conventional mortgage is when a borrower gets a conventional loan with an LTV that is above 80% and the borrower is required to pay

- property minimum taxes (PMT).
- private mortgage insurance (PMI).
- debt repayment insurance (DRI).
- mutual mortgage insurance (MMI).

29. To obtain a VA loan, the borrower is required to provide

- a certificate of insurance.
- evidence of having received a medal for valor in the military.
- a certificate of eligibility.
- proof of residence.

30. The secondary mortgage market is where loans are bought and sold by

- mortgagees to mortgagees.
- investors to lenders.
- borrowers to lenders.
- mortgagors to mortgagors.

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 6 Glossary Review Answer Key

1. reinstatement
2. package mortgage
3. acceleration clause
4. term loan
5. fully amortized loan
6. balloon
7. blanket mortgage
8. purchase money mortgage
9. equity
10. certificate of eligibility
11. Fannie Mae
12. VA
13. FHA
14. evidence of the debt
15. trustor

Unit 6 Quiz Answers

1. **B** The right to reclaim the property before a foreclosure sale is called equitable redemption. It is accomplished by paying off the entire loan amount, plus interest, costs, and charges. In a private sale foreclosure process, it is available for the last five days preceding the day of the sale.
2. **D** Principal is the total or original amount of the loan. Payments are first applied to interest, then to principal.
3. **A** A blanket mortgage covers two or more parcels of real estate.
4. **A** Today's value minus today's debt equals today's equity.

5. **C** The acceleration clause allows the lender to "call the note" upon default.
6. **A** The loan-to-value ratio is based on the purchase price or the appraised value, whichever is less.
7. **B** A loan in which the rate exceeds the legal maximum ceiling is said to be usurious.
8. **D** If a lender files a lawsuit to have a mortgage foreclosed under the supervision of the court, it is a judicial foreclosure.
9. **D** The document is called a reconveyance deed of trust, which will release the lien that was created by the original deed of trust.
10. **B** If the sale proceeds are insufficient to satisfy the debt, the lender may be able to claim a deficiency judgment.
11. **D** The alienation clause is also known as the due-on-sale clause.
12. **A** A deed of trust (trust deed) is a financing instrument that is similar to a mortgage.
13. **C** A term or straight loan requires interest-only payments until maturity, at which time the entire principal balance must be paid in full.
14. **B** The note establishes a promise to repay a debt.
15. **C** The property with the highest loan amount of \$95,000 is the most highly leveraged (has used the highest amount of borrowed money).
16. **C** Another name for a term loan or interest-only loan is a straight loan.
17. **B** The alienation (due-on-sale) clause will determine if a loan is assumable.
18. **B** The lender's unpaid balance is insured by the FHA against losses resulting from the borrower's default.

19. **B** The VA-guaranteed loan program is one of only a few that allows a 100% loan-to-value ratio.

20. **B** The primary purpose of the secondary mortgage market is to provide funding to the primary market.

21. **A** FHA and VA loans may be obtained only from approved primary lenders.

22. **A** Adjustable-rate mortgages have interest rates that can move up or down depending on specified conditions, such as an economic index or indicator.

23. **C** The partial release clause allows individual parcels to be sold off and released from the blanket lien as the developer sells the inventory in the development.

24. **D** In a reverse mortgage, the mortgagee (lender) pays the mortgagor (borrower).

25. **B** Home equity line of credit (HELOC) loans allow borrowers to obtain further advances at a later date. Due to substantial abuses, they became unavailable in the marketplace, but now, under better oversight, they are available again.

26. **A** Predatory lending is an umbrella term for unfair or illegal lending practices that typically target minorities, the elderly, and individuals that do not speak English as their first language.

27. **D** Contract for deed, land contract, and installment contract are all used to describe this type of financing document.

28. **B** Private mortgage insurance (PMI) is provided by a private, for-profit insurance company to protect the lender on the top 20% of the loan if the borrower defaults.

29. **C** The VA home loan guarantee program requires a certificate of eligibility (sometimes called certificate of entitlement), which establishes that the veteran purchaser qualifies for the program, in addition to a certificate of reasonable value (CRV), which is an appraisal.

30. **A** In the secondary market, lenders (mortgagees) sell loans to investors who become lenders (mortgagees) when they own the loans.

UNIT

7

Laws of Agency, Listings, Trust Accounts, and Fair Housing

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **explain** the concepts, terminology, and disclosure requirements associated with brokerage representation;
- › **identify** the major components of the agency agreements and the obligations of brokers under them;
- › **demonstrate** how real estate commissions are calculated and how funds are managed using trust accounts; and
- › **describe** the federal laws that protect Americans from unfair housing practices.

KEY POINTS—UNIT 7

- An agent is a person who is employed to represent or act for someone else (the principal) in dealings with third parties. The agent's authorized actions are binding on the principal, and the principal can be held liable if the agent's actions cause harm to a third party (vicarious liability).
- The common law of agency creates a fiduciary relationship. The agent's fiduciary duties to the principal include the duties of obedience, loyalty, disclosure, confidentiality, accountability, and reasonable care and skill (OLD CAR).
- An agency relationship may be created by written or oral agreement. Depending on the degree of authority conferred by the principal, an agent may be a special agent or a general agent. In most cases, the real estate brokerage firm is a client's special agent, while a salesperson or broker associate is an employing broker's general agent.
- A dual agent represents both the buyer and the seller at the same time. Dual agency is only allowed if both parties consent to the arrangement.

- Every licensee is required to disclose existing brokerage relationships to third parties or their agents. California law requires that this disclosure be in writing before the real estate professional receives any confidential information from a member of the public.
- A listing agreement is an employment contract between a brokerage firm and a seller, appointing the brokerage firm as the seller's special agent. The three types of listing agreements are exclusive right-to-sell listings, exclusive agency listings, and open listings. A buyer representation agreement is an employment contract between a brokerage firm and a buyer. A property management agreement is the employment agreement between a brokerage firm and landlord.
- California law determines the types of representation that brokerage firms can offer buyers and sellers. These types of representation include being a seller's agent, a buyer's agent, or a dual agent.
- An agency relationship may be terminated by accomplishment of purpose, expiration of the term of relationship, operation of law, mutual agreement, or revocation.
- The federal Fair Housing Act of 1968 prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in transactions involving housing or vacant land intended to be used for residential purposes. There are several exemptions from the Fair Housing Act, but the exemptions do not allow discrimination based on race or color because of the Civil Rights Act of 1866. The exemptions do not apply to any transactions in which a real estate licensee is employed.
- Three practices specifically prohibited under the Fair Housing Act are steering, redlining, and blockbusting. Steering is channeling buyers or renters to or away from specific neighborhoods based on protected class characteristics. Redlining is the refusal to make loans on properties located in particular areas for discriminatory reasons, such as crime rates. Blockbusting (panic selling) is attempting to obtain listings or arrange sales by predicting the entry of minority residents into a neighborhood and representing that this will cause a decline in the neighborhood.
- The Americans with Disabilities Act is intended to ensure equal access to public accommodations for the disabled. The law requires entities with facilities open to the public to eliminate architectural and communication barriers and to provide auxiliary aids and services for the disabled.
- Real estate professionals, sellers, and landlords must also comply with state and local fair housing laws.

I. THE OBLIGATIONS OF THE BROKERAGE FIRM

A. Role of the brokerage firm

1. The brokerage firm owns all contracts.
2. The employing broker (responsible broker) is responsible for the following:
 - a. _____, listings (employment), and purchase agreements
 - b. Supervision of all salespersons and broker associates

B. Role of salesperson/broker associate

1. Employed to represent the broker and brokerage firm
 - a. Owes duties to the client equivalent to the duties owed by the broker
2. Can be an employee or independent contractor
 - a. If employee, then the brokerage
 - i. _____, but
 - ii. does not have to guarantee vacations, set schedules, or set work hours.
 - b. Independent contractors (employed by the firm) must
 - i. have a _____ independent contractor agreement that states
 - they may set their _____, and
 - must pay their own taxes.
 - c. The firm can require independent contractors to conform to office policies.

II. AGENCY RELATIONSHIPS

- One party employs another to act on their behalf

A. Parties to an agency relationship

1. Principal: one who _____ another to act on their behalf; may or may not be the person who pays the agent
2. Agent/fiduciary: one who is employed to represent a principal
3. Third party: a party to a transaction who is not a party to the particular agency agreement. Consumer third party is a "customer" and is not represented by any broker

B. Law of agency specifies _____ duties to principal (OLD CAR)

1. _____

- a. An agent must obey the _____ directions of the principal.
- b. If a principal asks the agent to do something unlawful (e.g., intentionally fail to disclose a problem with the property or refuse to show the property to a member of a protected class), then the agent should decline the listing.

2. _____

- a. An agent must place the interest of the principal above all others.
 - i. Example: An agent is obligated to show a buyer all properties that meet the buyer's requirements, not just those with the highest commissions.
- b. An agent owes good faith and honesty to the principal.

3. _____

- a. An agent must disclose to the principal and all parties all known material facts about the property.
- b. An agent must disclose to the principal all knowledge about the transaction (including, but not limited to, material facts).
 - i. Example: The listing agent must share with the seller concerns about the buyer's ability to qualify for a loan.
 - ii. Example: The buyer's agent should share with the buyer concerns about the property's condition and recommend expert evaluation.
- c. An agent must disclose to the principal the benefits of the transaction, as well as the risks or defects.

4. _____

- a. An agent must keep the principal's confidential information private.
 - i. The agent must keep _____ (PTM) confidential.
- b. An agent may release confidential information _____ from the principal.

5. _____

- a. Agents must account for any money or personal property entrusted to them.

6. _____

C. Agent's duties to third parties (often called customers or consumers)

1. Honesty
 - a. An agent must disclose material facts that are known or should be known, even if the principal asks the agent to lie or keep silent.
 - b. Disclosure is also required for properties being sold "as is."
2. Fair dealing
 - a. At first contact with customers, agents must inform them to not share confidential information.
 - i. Agents' fiduciary duties would require them to share that information with their principal.

D. Scope of an agent's authority

1. Special agency is created when an agent is authorized to perform a particular act _____ the principal (in an advisory capacity only).
 - a. Listing brokerage firm to _____
 - b. Buyer brokerage firm to _____
2. General agency is created when an agent is authorized to perform a series of acts associated with the continued operation of a particular business. The agent has a _____ the principal.
 - a. Salesperson or broker associate to _____
 - b. Property manager to _____
3. The agent's authority comes from the same body of law that deals with a _____, which creates an attorney-in-fact.
 - a. Agent legally replaces principal
 - i. With special authorization, agent could accept/reject offers and _____

E. Creation of agency

1. Agency is determined by who _____ the agent, not who _____.
the agent.
2. An _____ is created by a direct statement.
 - a. May be oral or written
 - b. Only written commission agreements are enforceable
3. Implied agency is created through an agent's actions.
 - a. Example: Advising a third party to do something

F. Single agency/dual agency

1. A single agent represents only one party to a transaction.
2. Dual agency occurs when a broker represents more than one party to a transaction. The licensee will have limited duties of disclosure.
 - a. It typically requires disclosure and the _____ of both parties.
 - b. Undisclosed dual agency is _____.
3. The listing brokerage (typically the seller's single agent) will often cooperate with another brokerage that represents the buyer.
 - a. The listing brokerage pays a share of its commission to the cooperating brokerage.
 - b. Once an offer has been accepted, the buyer's broker may be referred to as the "selling broker."

III. BROKERAGE RELATIONSHIP DISCLOSURE REQUIREMENTS**A. Providing the disclosure form**

1. California law requires an agency relationship disclosure form to be provided to the consumer (seller or buyer) at first substantive contact and before a licensee receives any _____.
 - a. Agency disclosure is required in all residential transactions involving properties with one to four dwelling units.
 - b. Broker associates or salespeople must disclose if they are a principal or have any interest in the property.
 - c. When representing a buyer, broker associates or salespeople must disclose to the buyer before signing the offer or entering into a buyer broker agreement.
 - d. When representing a seller, broker associates or salespeople must disclose to the seller before signing the listing agreement.
 - e. This disclosure form is also required in commercial properties. SB 1171 made this a requirement effective January 1, 2015.

IV. SHERMAN ANTITRUST LAW**A. Price-fixing; not allowed**

1. All fees and commissions charged to the public are _____.
2. Commissions _____ or agreement among brokerage firms, MLS systems, broker associates, REALTOR® associations, or the Department of Real Estate.

3. Each _____.
 - a. Brokerage firms may require all brokers and salespersons within the firm to charge a set price.
 - b. Employing brokers may set the fees expected for the firm and may allow each broker associate or salesperson to negotiate with the consumer within certain parameters.
4. Price-fixing with other firms or associations violates the federal Sherman Antitrust Act.
5. Brokers may not discuss commissions with any brokers _____ of their firm.

B. Other requirements

1. Real estate firms or brokers may not work together to boycott another company or business.
2. Non-associated brokerage firms may not work together to assign or split up territories or assign company listings based on price range.

V. AGENCY AGREEMENTS/BROKERAGE AGREEMENTS

A. Listing agreement

- An employment contract that appoints a brokerage firm as an owner's special agent for the specific purpose of finding a buyer who is ready, willing, and able to buy according to the terms of the contract

1. Parties
 - a. Seller = _____
 - b. Brokerage firm = _____
2. Elements of a listing agreement
 - a. In writing
 - b. Price and terms
 - i. Listing price
 - ii. Financing terms
 - c. Amount and/or method of compensation
 - i. Flat fee
 - ii. Percentage of sales price

iii. Net listing

- Brokerage receives as commission all money above a minimum agreed sales price
- Not recommended in California to protect sellers, who may not be aware of true market value

d. “Negotiable commission” clause

- i. Commissions are always _____, as required by the Sherman antitrust law.

- ii. Licensees may only be paid by their brokerage firm.

- e. Definite _____ dates in exclusive types of listing agreements

- i. Contract must be amended to extend listing past expiration date

f. Multiple-listing clause

- i. Allows broker to list property in the MLS and offer a cooperation (co-op) fee to other brokers

- ii. Listing brokerage and broker represent the _____

- iii. Buyer's brokerage and broker represent the _____

g. Broker protection/extension/safety/holdover clause

- i. Brokerage is entitled to commission if prospect buys after listing expires

- ii. Brokerage must give protective list to seller

- iii. Clause terminates if owner lists with another brokerage

h. Signatures

- i. Listing agreement must be signed by _____ to be valid for the sale of the entire property

3. Types of listings

a. Exclusive right-to-sell

- i. The brokerage gets paid if the property sells, regardless of who finds the buyer.

- Even if the _____ the property

- ii. It offers maximum protection to the brokerage firm. The broker will give maximum effort.

- iii. It is a bilateral agreement.

- b. Exclusive agency
 - i. The brokerage gets paid if the property sells,
_____.
 - ii. It is a bilateral agreement.
- c. Open/nonexclusive
 - i. The brokerage only gets paid if the broker procures the buyer.
 - Only the brokerage who finds (_____) the buyer gets paid
 - Seller can sign open agreements with more than one brokerage firm
 - Unilateral agreement
 - Sale to a buyer automatically terminates all other open listings with or without notice
- d. _____
 - i. This is when a licensee takes a listing on a property and at the same time enters into an option agreement that gives the licensee the ability to choose to buy the property. It is not illegal in California but is discouraged by the Department of Real Estate because of the potential for abuse.

Figure 7.1: When Does the Listing Broker Get Paid

Type of listing	Owner obtains buyer	Co-op agency obtains buyer	Listing agency obtains buyer	Someone else obtains buyer
Exclusive right-to-sell	\$	\$	\$	\$
Exclusive agency		\$	\$	\$
Open			\$	

B. Buyer representation agreement

1. Parties
 - a. Buyer is principal
 - b. Brokerage firm is agent/fiduciary
2. Same elements as listing agreement
3. Can be exclusive right to buy or exclusive agency agreement

C. Obligations of brokers under listing agreement

1. Present all written offers.
2. Complete a written offer if the buyer requests it.

3. Pay fees only to licensed brokers.
 - a. No fees or commissions may be paid to unlicensed persons for performing acts that require a license.
 - b. Brokers may pay referral fees to other brokerage firms, but never directly to broker associates or salespeople.
4. Put all agreements in writing, have them signed, and give all parties copies.
5. Verify that all marketing is correct and truthful.
 - a. This includes the disclosure of material facts and property information (e.g., property taxes, HOA dues, etc.)
6. Verify that the buyer has received the seller's property disclosure before making an offer.
 - a. If a seller misrepresented a latent defect in the seller's property disclosure, the broker would not be held liable if the broker had performed a visual inspection and found no obvious defects.

D. Property management agreement

1. A property management agreement is a contract between the owner of an income-producing property and a brokerage firm that will act as the property manager.
2. The parties to the agreement are the following:
 - a. Property owner: _____
 - b. Property manager (brokerage firm):
 - i. Broker associates and salespeople may not be a party or sign without the _____.
3. The manager's responsibilities in the agreement are financial, physical, and administrative, and include the following:
 - a. _____ of the property
 - b. _____ from the property
 - c. Find well-qualified tenants
4. Management responsibilities include the following:
 - a. Marketing space to attract tenants
 - b. Collecting rents and complying with rent control rules
 - c. Negotiating leases, including investigating applicants' qualifications

- d. Developing a budget and preparing financial reports, including reserves for replacement of short-life items such as air conditioners, appliances, carpeting, etc.
 - i. The manager has the authority to paint units but not to make capital improvements, such as a total renovation of the units.
- 5. Brokers managing industrial/manufacturing properties may be concerned about environmental issues.

E. Obligations of brokers

- 1. Verify information and statements made by the buyer and seller, especially if they appear to be untrue.
 - a. Disclose all known material facts to all parties.
- 2. Complete a visual assessment of the property, looking for material defects, and request a seller's property disclosure.
 - a. Recommend the buyer have an inspection to check for latent defects and environmental issues.
 - b. Point out any "red flag" issues (e.g., sagging floors, water stains, etc.) that may indicate potential problems.
- 3. Complete a CMA even if the brokers/salespeople believe they know the current value.
- 4. Answer third-party questions with honesty and clarity.

F. Termination of listing and buyer broker agreements

- 1. Full performance, closing, or expiration of the agreement
- 2. Death or bankruptcy of principal or brokerage firm (not salesperson or broker associate)
- 3. Destruction of improvements
- 4. Mutual rescission
- 5. Breach by either party
 - a. Terminates the agreement but there may be liability issues

VI. WARRANTIES

A. Home warranty programs—cover existing homes

- 1. Home warranties cover the majority of the home, including all major systems and appliances.
- 2. Home warranties are often provided as part of the listing or offer.
- 3. The terms and length are determined _____ with the warranty company.

4. Warranties usually feature a deductible and may exclude some items from coverage.
5. Brokers should make sure buyers know that warranties are available.

B. New home construction warranties

1. This warranty is provided on newly constructed homes by the builder and must meet strict underwriting guidelines. It is also known as a warranty of habitability or suitability.
 - a. Covers roof or other structural failure, poor materials or workmanship, or faulty appliances after closing
 - b. Does not cover _____ from outside forces
2. The requirements for builder warranties can be set at the state or local level.
3. Third-party companies can give buyers additional coverage for new construction.
4. Brokers should make sure buyers fully understand the limits of all warranties.

VII. BROKER'S TRUST ACCOUNT**A. Trust funds (other people's money) are held in a trust account.**

1. If a brokerage firm accepts and holds funds that belong to others (i.e., _____, security deposits, rents, taxes, insurance, escrow payments, and unearned commissions), then the brokerage firm and employing broker are required to maintain records of trust funds.
2. Broker associates and salespersons may not have trust accounts; however, if they handle trust funds, their broker must maintain trust fund records.
3. Licensees must follow requirements when handling earnest money.
 - a. Licensees must give earnest money checks to the listing brokerage firm immediately after the offer is accepted.
 - b. The managing or employing broker of the listing firm does one of the following with trust funds within three business days, unless there is an instruction from the principal:
 - i. Deposit in own trust fund account
 - ii. Deliver to principal
 - iii. Place in other trust account (e.g., escrow company)
 - c. The account must be a _____, which freely allows for the deposit and withdrawal of funds.
4. Property managers must deposit trust funds (i.e., tenant security deposits, rents for clients, damage deposits) in a trust account.

5. The commingling of funds is prohibited. Real estate professionals cannot _____ personal funds or the firm's funds with trust funds.
 - a. Referral fees and earned commissions are not kept in a trust account.
6. _____ is when trust funds are used for personal reasons.
7. Brokers must keep accurate records of all money deposited in and disbursed from the trust account.
8. If the broker receives a NSF (not sufficient funds) check, the broker must immediately inform the seller.

VIII. FAIR HOUSING LAWS

A. Civil Rights Act of 1866

1. The act prohibits any discrimination based on race in the sale and rental of all property.
2. There are no exceptions to this federal act.

B. Federal Fair Housing Act/Civil Rights Act of 1968

1. Protected classifications in the sale and rental of residential property
 - a. Race
 - b. Religion
 - c. Color
 - d. Sex
 - e. National origin
 - f. Familial status
 - i. Added in 1988, it protects any family with _____ under the age of 18. It also includes pregnant women and those fighting for child custody.
 - g. Handicap/disability
 - i. Added in 1988, it includes protection of those with HIV or AIDS.
2. Classifications that are not protected under federal law, but may be covered by local fair housing laws
 - a. Sexual orientation
 - b. _____
 - c. _____ status
 - d. Occupation (e.g., a student)

Figure 7.2: Remember FReSH CoRN**F** - familial status**R** - race**e** - equal**S** - sex**H** - handicap**C** - color**o** - opportunity**R** - religion**N** - national origin

3. Exemptions

- a. If there is a conflict between federal, state, and local laws, the strictest law will prevail.
- b. Real estate brokers and salespeople may not discriminate _____.
- c. All advertising must be in compliance with the law; there are no exemptions.
 - i. _____ used to advertise housing, including online blogs and social media, fall under this rule.
- d. It is not unlawful to discriminate based on religion, color, sex, national origin, familial status, or handicap/disability in the following situations:
 - i. Owners who are renting or selling their own single-family home (_____) can discriminate.
 - No broker and no discriminatory advertising
 - ii. Owners who are renting units in a building with four units or less can discriminate if an owner occupies one of the units.
 - No exemption for buildings with more than four units, even if the owner or owner's family occupies a unit
 - No broker and no discriminatory advertising
 - iii. Private clubs, not open to the public, may restrict lodgings to members only.
 - iv. Religious organizations may give preference to their members for other than commercial purposes. Religion or denomination must not limit membership based on race, color, or national origin.
 - v. _____ is allowed to refuse occupancy in the rental or sale of units to families with children if the senior housing has at least _____ of the units occupied by at least one person aged _____ or older.

4. Prohibitions

- a. It is a violation of the federal Fair Housing Act to do any of the following related to housing accommodations (residential property) based on membership of a protected class:
 - i. Refuse to show, rent, sell, negotiate, or deal (if asked by seller or buyer to discriminate, broker should cancel agency)
 - ii. Offer different terms
 - iii. Advertise in a discriminatory fashion, including ads in newspapers, social media, and other online sites
 - May not advertise against any protected class
 - Unacceptable example: “no children” or “no Caucasians”
 - Acceptable example: “no smoking”
 - Advertise the property, not who should occupy it
 - iv. Steering— _____ potential buyers to or away from particular areas as a means of discrimination
 - v. _____—also called _____
 - Example: suggesting neighbors should sell because a group of a particular ethnic background has moved into the area
 - vi. _____—refusing to offer or limiting loans in certain areas because of crime rates or the ethnic background of its residents

5. Key points about the disability classification

- a. A disability is any physical or mental impairment that substantially limits one or more major _____.
 - i. This includes those suffering from HIV/AIDS.
 - ii. Alcoholics and drug addicts are protected if seeking treatment, but are not protected if using illegal drugs.
 - May not discriminate against medical marijuana users; state laws determine which rules apply (e.g., no smoking on property).
 - iii. The law specifically excludes those convicted of dealing drugs.
 - iv. Both current and recovered mental patients are protected under the law.

- b. Landlords must allow disabled tenants to make changes to units.
 - i. Tenant must return the unit to its original state.
 - ii. Landlords may not charge an extra _____.
 - iii. Landlords cannot charge additional rent or a pet deposit for a service animal, or deny tenancy because of the presence of a service animal.
 - iv. Landlords are not required to rent to disabled tenants who have a history of _____.

6. Complaints

- a. Complaints can be filed at the federal or state level.
- b. At the federal level, complaints must be filed with HUD within one year.
- c. Complaints can be filed directly in federal court within _____.
 - i. The first step is for HUD or the state to _____ the complaint.
- d. HUD, FHA, or VA may not revoke a real estate license.
- e. In a complaint, HUD will consider the following:
 - i. Testing studies done on the company by HUD
 - ii. The properties shown to the buyer or tenant
 - iii. If an equal opportunity poster is displayed in the office
 - Brokers must display the equal opportunity poster in each office or place of business.
 - Failure to display the poster can shift burden of proof to broker in an alleged discrimination complaint.
 - The equal housing logo should be used in advertising but it is not a federal requirement.
- f. HUD does not consider the intentions of brokers or salespersons even if the broker or salesperson felt like they were working in the consumer's best interest.

7. Penalties

- a. May include injunctions, damages, court costs, attorney's fees, and civil penalties
- b. No imprisonment; not a criminal offense

8. Working within the law

- a. Protect against claims of discrimination by _____ (e.g., all showings and disclosures)

C. Americans with Disabilities Act (ADA)

1. ADA is intended to ensure equal access to public accommodations for disabled persons.
2. A public accommodation is any private entity with facilities _____, such as a real estate office.
3. ADA requires removal of architectural and communication barriers and the provision of auxiliary aids and services, if “readily achievable.”
4. New commercial construction must be accessible to the disabled.
5. Disabled residential tenants may make modifications _____. They must return the unit to its original condition.
6. ADA uses the same definition of a disability that was discussed earlier.

UNIT 7 GLOSSARY REVIEW

agent	exclusive agency	negotiation
brokerage firm	exclusive right-to-sell	open
commingling	fiduciary	principal
conversion	immediately	trust account
dual	maintain value	well-qualified tenants

1. One who employs an agent to act on her behalf is a _____.
2. The person employed by a principal to act on his behalf is an _____.
3. Commissions charged by brokerage firms for their services are set by _____.
4. A listing agreement in which the owner agrees to pay the agent a commission regardless of who sells the property during the listing period is known as an _____ listing.
5. A listing that appoints a broker as the sole agent to find a property for the buyers, but allows the buyers to find their own property without paying a commission, is an _____.
6. A listing that allows an owner to list concurrently with more than one broker is known as an _____ listing.
7. The relationship of brokers to their principals is known as a _____ relationship.
8. When a broker serves as the agent for both the buyer and the seller, it is a _____ agency.
9. Unless otherwise provided for, earnest money must be deposited in the broker's _____.
10. Depositing a client's money in the same account with the broker's money (which is illegal) is _____.
11. Using trust funds for personal reasons is _____.
12. The first responsibility of a property manager is to _____.
13. A property manager should seek _____.
14. The buyer's broker should deliver the earnest money to the listing broker _____ after acceptance of the offer.
15. Real estate commissions charged by a firm are determined by the _____.

UNIT 7 QUIZ

1. A listing broker is typically the
 - A. seller's agent.
 - B. buyer's principal.
 - C. buyer's agent.
 - D. third party.
2. In an exclusive right-to-sell listing, the principal contracts
 - A. with several brokers, each of whom deals with only one third party.
 - B. to pay the broker a commission regardless of who procures the buyer.
 - C. with only one broker, but reserves the right to sell the property herself without paying a commission.
 - D. with several brokers.
3. All of the following will terminate a listing without liability *EXCEPT*
 - A. destruction of the property.
 - B. mutual agreement.
 - C. expiration.
 - D. death of the salesperson.
4. The document used to form the relationship between the agent and the principal is a(n)
 - A. open listing.
 - B. listing agreement with a seller or a buyer representation agreement with a buyer.
 - C. facilitations contract.
 - D. lease.
5. The amount of commission paid to a broker is established by
 - A. state law.
 - B. negotiation between the broker and the seller.
 - C. local custom.
 - D. real estate boards.
6. A listing in which the principals agree to contract with only one broker but reserve the right to sell the property themselves without paying a commission is a(n)
 - A. exclusive agency listing.
 - B. open listing.
 - C. exclusive right-to-sell listing.
 - D. net listing.
7. The owner of a property has signed an exclusive right-to-sell listing contract. Which of the following is *TRUE*?
 - A. The owner has promised to accept a reasonable offer.
 - B. The owner has promised to accept any offer identical to the listed price and terms.
 - C. The owner has promised to pay a commission if the property is sold during the listing period.
 - D. The owner will pay only the broker who finds a buyer.
8. The clause in a listing agreement that protects the broker's commission if someone with whom the broker negotiated purchases the property after the expiration of the listing is known as a
 - A. nondiscrimination clause.
 - B. protection or safety clause.
 - C. due-on-sale clause.
 - D. cooperation clause.
9. A property manager is *BEST* described as a
 - A. general agent
 - B. special agent.
 - C. universal agent.
 - D. facilitator.
10. In an open listing, a broker receives a commission
 - A. by procuring the buyer.
 - B. by offering a co-op to other brokers in MLS.
 - C. from anyone who sells the property.
 - D. only if the seller does not sell the property.
11. Which is an example of commingling?
 - A. A broker deposits earnest money in her trust account.
 - B. A broker deposits earnest money in her business account.
 - C. A broker deposits commissions earned in her business account.
 - D. A broker deposits a tenant's security deposit in a property management trust account.

12. If a broker and a seller have a fiduciary relationship, the broker could
 - A. inform a buyer that the seller will accept substantially less than the listed price.
 - B. fail to tell the buyer about hidden structural problems in order to protect the seller.
 - C. disclose the buyer's financial qualifications.
 - D. honor the seller's request to refuse to show the property to minorities.
13. If a seller informs a broker that the house is for sale "as is," which of the following would be an appropriate action for the broker?
 - A. The broker informs all potential buyers that there is nothing wrong with the property even though the broker has not inspected it.
 - B. The broker visually inspects the property, sees a water leak in the ceiling, and informs potential buyers about it.
 - C. The broker agrees to allow the seller to handle all conversations with potential buyers about the condition of the property.
 - D. The broker advises potential buyers that an "as is" property requires no property disclosures.
14. Which of the following would be *LEAST* likely to appear in a listing agreement?
 - A. Negotiable commission clause
 - B. Expiration date
 - C. Listing price
 - D. Estimated closing costs
15. When a property manager signs a property management contract with an owner, the property manager is a
 - A. fiduciary of the property owner.
 - B. third party to the contract.
 - C. universal agent of the broker.
 - D. principal of the property owner.
16. A real estate agent's fiduciary obligations include which of the following?
 - A. Care and diligence to the principal
 - B. Fair and adequate compensation from the third party
 - C. Disclosure of confidential information about the principal
 - D. Loyalty to third parties
17. The property manager's first obligation is to
 - A. maintain the value of the property.
 - B. earn a profit.
 - C. find high quality tenants.
 - D. hire good contractors.
18. A home sells for \$325,000 and the brokerage firm receives \$19,560 in commission. What was the commission rate paid by the seller?
 - A. 3%
 - B. 5%
 - C. 6%
 - D. 17%
19. Listing broker Linda splits commissions with cooperating broker Cindy on a 60:40 basis with 60% retained by the listing company. The cooperating (selling) brokerage splits with the selling salesperson with 70% to the salesperson. What does the selling salesperson earn if the sale price is \$295,000 and the negotiated commission rate was 5.5%?
 - A. \$1,947
 - B. \$4,543
 - C. \$6,490
 - D. \$6,815
20. The contract that allows a property manager to screen tenants and collect rent is a
 - A. lease agreement.
 - B. gross lease.
 - C. management agreement.
 - D. exclusive right-to-sell listing agreement.
21. A brokerage firm that hires salespersons as independent contractors should supply them with
 - A. set work schedules.
 - B. paid vacations.
 - C. notice of the brokerage firm's withholding for taxes.
 - D. an agreement that salespersons may set their own hours.
22. What duties does a listing agent owe to a third-party buyer?
 - A. Fairness and disclosure of benefits and risks
 - B. Honesty, fairness, and disclosure of material facts
 - C. Honesty, confidentiality, and fairness
 - D. Disclosure of material facts, honesty, and loyalty

23. An agent must obey
 - A. all instructions of the principal.
 - B. only lawful instructions of the principal.
 - C. only the instructions of the principal that the agent wants to follow.
 - D. only instructions of the principal that are approved in advance by the Bureau of Real Estate.
24. All of the following are examples of confidential information that an agent for a principal could not disclose without permission *EXCEPT*
 - A. price.
 - B. terms.
 - C. motivation.
 - D. a faulty foundation.
25. The illegal brokerage practice of suggesting that individuals should sell because of the influx of members of a protected class into a neighborhood is called
 - A. steering.
 - B. redlining.
 - C. blockbusting.
 - D. trashing.
26. Refusing to make loans in certain geographical areas because of the ethnicity of its residents is called
 - A. steering.
 - B. redlining.
 - C. blockbusting.
 - D. panic peddling.
27. Listing agreements and buyer broker agreements may be terminated in all of the following ways *EXCEPT*
 - A. full performance.
 - B. death of the principal.
 - C. mutual rescission.
 - D. unilateral rescission.
28. Home warranties typically cover
 - A. all personal property items in the home.
 - B. only personal property such as washers, dryers, and refrigerators.
 - C. the majority of the home, including major systems and appliances.
 - D. only the plumbing and electrical system.
29. Individuals who may not be a part of a protected class under federal fair housing laws
 - A. may be protected under local fair housing laws.
 - B. have no other possible recourse.
 - C. can complain to private organizations to get relief.
 - D. can get relief at their local association of REALTORS®.
30. If there is a conflict between federal, state, and local fair housing laws, the
 - A. federal law will prevail.
 - B. strictest law will prevail.
 - C. local law will prevail.
 - D. prevailing law must be determined by a judge.

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 7 Glossary Review Answer Key

1. principal
2. agent
3. negotiation
4. exclusive right-to-sell
5. exclusive agency
6. open
7. fiduciary
8. dual
9. trust account
10. commingling
11. conversion
12. maintain value
13. well-qualified tenants
14. immediately
15. brokerage firm

Unit 7 Quiz Answers

1. **A** The listing broker is the agent for the seller.
2. **B** Under an exclusive right-to-sell listing, the broker is paid regardless of who procured the buyer.
3. **D** One party's change of heart does not terminate a listing without liability, unless the other party is also willing to terminate it. The seller would still owe the broker a commission if the terms of the listing were fulfilled.
4. **B** Listing agreements and buyer representation agreements can create fiduciary obligations of agents to principals.
5. **B** Commission rates are determined through negotiation.
6. **A** Under an exclusive agency listing, owners retain the right to sell the property on their own without compensating the listing broker.
7. **C** In an exclusive right-to-sell listing, the broker is entitled to be paid if the property is sold during the listing period, regardless of who obtains the buyer.
8. **B** This clause, which may be called the protection, safety, extension, or holdover clause, protects the broker's commission for up to six months after the listing terminates.
9. **A** A property manager is a general agent of the property owner. The relationship is ongoing and allows the property manager to bind the property owner to leases.
10. **A** In an open listing, the broker must be the procuring cause of the buyer buying.
11. **B** Trust funds may not be placed in the broker's business account.
12. **C** As a fiduciary of the seller, the broker has the duties of obedience, loyalty, disclosure, confidentiality, accountability, and reasonable care and skill (OLD CAR). However, these fiduciary duties do not require or permit the broker to commit fraud or violate anti-discrimination laws.
13. **B** Licensees must reveal all material facts they know or reasonably should know.
14. **D** Closing costs are estimated upon presentation of an offer, not in the listing agreement.
15. **A** A property manager is the agent (fiduciary) of the property owner.
16. **A** The law of agency specifies fiduciary obligations to the principal, including loyalty, confidentiality, disclosure, obedience, reasonable care and skill (diligence), and accounting.

17. **A** The first obligation of a property manager is to maintain the property so that it can make a profit. The manager would do this by finding high quality tenants and hiring good contractors.

18. **C** $\$19,560 \div \$325,000 = 0.06 = 6\%$

19. **B** $\$295,000 \times 0.055 \times 0.4 \times 0.7 = \$4,543$

20. **C** The agreement that gives property managers general agency obligations and allows them to screen tenants and collect rent is the management agreement.

21. **D** Independent contractors must have an agreement stating that they may set their own hours.

22. **B** A listing agent owes a third party honesty and fairness, and must disclose material facts. Agents must disclose benefits and risks to the principal, not to a third party.

23. **B** An agent is only obligated to obey lawful instructions of the principal. For example, if a principal instructed an agent not to show the principal's property to members of a protected class, the agent would not be obligated to comply.

24. **D** The price that the seller would accept, and the seller's terms and motivation are examples of confidential information that an agent cannot disclose without consent of the principal. A faulty foundation is an example of a material fact that must be disclosed.

25. **C** Attempting to influence individuals to sell by convincing them that property values are going to decline in the neighborhood as a result of the influx of a specific protected class of buyers is referred to as blockbusting or panic peddling.

26. **B** A lender who refuses to make loans based on racial or ethnic neighborhood composition is redlining, which is illegal.

27. **D** Neither the broker nor the principal may unilaterally rescind a listing agreement without financial liability. The broker or the principal may terminate the agency relationship at any time, which may result in liability under the employment contract.

28. **C** Typically, all major systems and appliances are covered, but what exactly is covered is limited to what is included in the home warranty contract itself. Real estate agents should encourage buyers of home warranties to read the contract carefully and ask questions.

29. **A** There are many state and city fair housing statutes that provide additional protection and recourse to their citizens that extend beyond the protected classes under federal law (e.g., occupation is not a protected class under federal law).

30. **B** The strictest fair housing law will prevail.

UNIT 8

Practice of Real Estate, California License Law, and Disclosures

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **explain** the role of the transfer disclosure statement and the importance of disclosing material facts;
- › **discuss** the major environmental issues that pertain to real estate and the disclosure obligations for each of them;
- › **interpret** and **summarize** consumer protection laws;
- › **explain** the importance of real estate licensees complying with standards of ethical practice and understanding their level of competence; and
- › **summarize** when a real estate license is needed and the requirements for obtaining a license in California.

KEY POINTS—UNIT 8

- Sellers of one- to four-unit residential properties must give a seller's property transfer disclosure statement to buyers. Sellers and brokers are required to disclose visible and latent material defects to buyers.
- Federal law requires that the seller or the landlord disclose the possible presence of lead-based paint for any residential property built before 1978 and whenever the owner is aware of a lead hazard. Disclosure of other known environmental hazards such as asbestos, radon, formaldehyde, carbon monoxide, and mold is also required.
- It is important for licensees to be knowledgeable about consumer protection laws that will help clients and customers better achieve their objectives.
- The Truth in Lending Act, implemented by Regulation Z, is a federal law that requires lenders to disclose the complete cost of credit to consumer loan applicants. Required disclosures include the total finance charge and the annual percentage rate. In addition, borrowers must be given a three-day right of rescission on home equity loans.

- The Equal Credit Opportunity Act is a federal law that prohibits discrimination in the granting of consumer credit based on a set of protected classes.
- Various organizations promulgate codes of ethics for the real estate business. The most common is the National Association of REALTORS® Code of Ethics, which is based on the golden rule of treating other people the way you would want to be treated.
- Real estate professionals should know when they are not competent to perform a task, including practicing outside their area of expertise and completing legal documents they do not fully understand. Licensees must know when they need to recommend that the party they are working with seek legal advice.
- A real estate broker licensee is a natural or legal person who—for another person and for a fee—lists, sells, exchanges, manages, buys, rents, arranges loans, or negotiates options on real estate. There are a couple of exceptions for persons who are not required to have a real estate license. Other persons who act as a licensee without a license will be fined.
- Salespersons and brokers must complete education and experience requirements in order to obtain a license. Continuing education is required in order to renew a real estate license.

I. PROPERTY TRANSFER DISCLOSURES

A. Seller's property transfer disclosure statement

1. California law requires sellers of residential properties with one to four units to deliver a seller's property transfer disclosure statement (TDS).
 - a. The disclosure typically covers the following:
 - i. Land/soil and environmental conditions
 - ii. Structural issues and condition of fixtures
 - iii. Encroachments, easements, etc.
 - iv. All material defects
 - b. Sellers (never the broker) complete the disclosure to the best of their _____.
 - c. Sellers and brokers must disclose visible and latent material defects (facts) to all buyers.
 - i. A material fact or defect is one that, if known, _____.
 - ii. A latent defect is a _____ that is not easily discovered by an inspection.
 - d. California law requires that the TDS be delivered to the prospective buyer before the transfer of title. However, standard practice is to deliver it before the buyer signs an offer to purchase.
 - e. Buyers may be able to rescind the contract if they can prove the seller or broker knew about a material defect but did not disclose it.
2. Brokers must visually inspect the property and are responsible for doing the following:
 - a. Disclose all material defects they find, even if the seller is not aware of the defect
 - b. Request that the seller disclose any latent defects
 - c. Upon discovery of a material defect, immediately disclose it to all parties to the transaction or potential transaction
 - i. Example: A buyer's broker notices water marks on the ceiling while showing a property. The broker should disclose the potential roof leak to the buyer and make sure the seller and listing agent are also notified.
 - d. Recommend that buyers have a property inspection

3. If a seller misrepresents a latent defect in the seller's property transfer disclosure statement and the broker performed a visual inspection and did not find any obvious defects in the property, the seller (not the broker) would be held responsible for the misrepresentation.

II. ENVIRONMENTAL DISCLOSURE REQUIREMENTS

A. Key points

1. Most environmental issues fall under the purview of the _____.
2. Real estate professionals should have a working understanding of environmental issues and disclosure obligations. Additionally, they should
 - a. be familiar with the environmental issues common to the area in which they practice,
 - b. look for signs of contamination and other issues, and
 - c. inform and recommend (but never advise) further investigation into the impact of environmental issues.
3. Environmental issues are considered to be _____ by sellers and brokers.
4. Brokers who suspect an environmental issue must disclose it, even if the seller believes it has been cured or removed.
5. Brokers should recommend the buyer have the property inspected to verify if there are any concerns.
6. Properties with high level of contamination may need to have the hazard removed or cleaned before the sale.

B. Asbestos

1. Asbestos is a mineral used in building that can cause respiratory disease.
2. Asbestos was used before 1978 in a variety of building materials, including pipe and wall insulation, flooring, and siding.
3. It is harmful only if the fibers are friable (broken and potentially airborne). The hazard is from inhaling the microscopic fibers, which can cause a variety of respiratory diseases.
4. If a building is being demolished or renovated, _____ should be done by a licensed professional before demolition.
5. _____ (sealing in place) is _____ than removing asbestos because there is less of a risk of exposing the fibers.

C. Lead-based paint disclosures

1. Elevated levels of lead can cause serious and potentially fatal neurological damage; children and pregnant women are most at risk.

2. Federal law requires _____ of housing built before _____, to make a disclosure to buyers, even if a real estate licensee is not involved in the transaction. Brokers must inform sellers of their obligation to perform the following:

- Disclose the location of any known lead-based paint
- Provide a copy of any report on the home
- Give a copy of the EPA pamphlet on lead poisoning
- Offer buyers a 10-day opportunity to have the home tested
 - Buyers may _____.
 - If not waived, buyers may terminate the contract during the 10-day inspection period.

3. Sellers are not required to do a _____.

4. The listing broker is responsible for making sure that the purchase agreement includes signed acknowledgments by the buyers and the sellers.

5. Property managers and landlords must give a similar disclosure and EPA pamphlet to renters if the property was built before 1978.

- The renter does not have to be given the opportunity to test or have lead-based paint removed.

6. The Renovation, Repair, and Painting (RRP) program of 2010 covers firms, trades, and individuals performing renovation, repair, and painting that disturbs lead-based paint.

- Those doing the work must be certified in containment and clean up of lead dust and debris.
- Homeowners must be provided with the Renovate Right brochure before the work begins.
- Property owners working on their personal property are exempt, but must be in compliance if working on a rental property.
- It is considered a material fact if a renovation was completed in violation of this rule.

D. Radon

- Radon is a naturally occurring _____.
- Radon moves from the ground to the atmosphere.
- Radon creates a hazard if it is trapped in a building. It can cause lung cancer.
- Radon is relatively easy to test for but is impossible to detect without testing. A professional radon tester can discover the presence of radon and recommend a plan to lower the level of radon in the property (mitigation).
- Radon is _____ by adding a ventilation system to move the gas outside, which is typically less expensive than solutions for many other environmental issues.

E. Carbon monoxide (CO)

1. Carbon monoxide is an odorless gas that is the byproduct of combustion.
2. If combustion appliances, furnaces, and wood stoves are working properly and have proper ventilation, CO is not an issue.
3. Improper ventilation or equipment malfunction can cause a buildup of CO gas, which can lead to death.
4. Carbon monoxide can be detected with a CO monitor/detector.

F. Mold

1. Toxic mold is created by excess moisture.
2. Not all molds are hazardous. Mold can grow anywhere there is oxygen, moisture, and an organic food source.
3. If found in housing, mold can be a hazard and may require remediation.
4. _____ (removal) of mold should be done per EPA and state regulations.
5. There is no federal disclosure law for mold. Buyers may have their inspector check for mold.
6. Sellers must disclose if there was or is a mold issue.
7. Brokers should be aware of indications of mold, such as a musty smell, water damage, high humidity, or water leaks.
8. Mold may not be covered by the homeowners insurance policy.

G. Other environmental issues

1. Formaldehyde, chlorofluorocarbons, electromagnetic fields, and methamphetamine labs all pose potential problems.
2. Brokers and salespersons should also be aware of the impact of underground storage tanks, groundwater pollution, brownfields, and waste disposal sites.

H. Environmental impact report

1. An environmental impact report describes the potential impact of a proposed project on local and regional
 - a. air,
 - b. wetlands,
 - c. land, and
 - d. environment.

2. An environmental impact report is mandatory for government projects and may be required for private development.

I. Stigmatized properties (psychological impact)

1. Stigmatized properties are those that may be deemed undesirable due to activities that occurred there, such as a suicide, murder, or criminal activity.

III. CONSUMER PROTECTION LAWS

A. Truth in Lending Act (Federal Reserve Regulation Z)

1. Purpose: to promote the informed use of consumer credit by requiring advance disclosures of loan terms and costs.
 - a. Four primary disclosures required of lenders
 - i. The _____ is expressed as the loan's APR; it is not the same as the interest rate.
 - The APR, also known as the effective rate, expresses the relationship of the total finance charge to amount financed.
 - The APR will be _____ than the "face rate" or "nominal interest rate."
 - ii. The total finance charges associated with the loan include nominal interest, origination or assumption fee, borrower-paid points, and mortgage insurance costs.
 - iii. The total number and amount of all payments must be disclosed by the lender.
 - iv. The total amount financed must be disclosed by the lender.
 - b. Applies only to charges paid by the borrower _____
 - i. Does not disclose _____
 - c. Does not include payments to third parties (i.e., title insurance, legal fees, _____)
 - d. Additional costs associated with closing are not included in the finance charge (e.g., closing expenses, legal fees, title insurance premium, and seller paid points)
 - e. Applies to all real estate loans except the following:
 - i. Loans to corporations
 - ii. Business or commercial loans
 - iii. Seller financing (purchase money mortgage or contract for deed)

2. Right of rescission

- a. Requires a _____ for refinances of owner-occupied, one- to four-unit properties and home equity loans

- i. Rescission does not apply to _____.

3. Advertising requirements

- a. The asking price and/or APR are the only specific finance terms allowed in an advertisement without triggering a full disclosure requirement.
- b. Information about the down payment, interest rate, monthly payments, or number of payments _____ requirement (the small print).
- c. General statements (e.g., “low down payment” or the amount of _____) that are not related to financing are allowed.
 - i. Example ad: “\$150,000 purchase price with an APR of 5.5%; call for other great terms; HOA \$50 per month; taxes \$1,200 per year” (no trigger)
 - ii. Example ad: “\$150,000 purchase price with 100% financing and a payment of \$675 per month” (would trigger full disclosure of the interest rate, number of payments, etc.)

B. Megan's Law

1. Megan's Law requires the registration of sex offenders.
2. Sellers and brokers have a duty to buyers to disclose the existence and location of the Megan's Law database and any actual knowledge they possess regarding the location of sex offenders.

C. Equal Credit Opportunity Act (ECOA)

1. The purpose of ECOA is to make consumer credit available with fairness and impartiality. If applicants meet qualifying requirements, their membership in a protected class should have no bearing on their approval.
2. It prohibits discrimination in all consumer credit transactions and does not allow lenders to deny credit to qualified applicants on the basis of race, color, religion, national origin, sex, marital status, age, or dependence on public assistance.
3. ECOA adds the protected classes of _____.
 - a. It does not protect minors, families, or those with an erratic employment history.
4. Lenders are required to provide a written notice of why a borrower was denied a loan.

D. National Do Not Call Registry

1. The National Do Not Call Registry is a list of phone numbers telemarketers are not allowed to call.
 - a. Real estate brokers and salespeople must check the list before cold calling.

2. Brokers and salespeople may contact consumers for _____ after the consumer has made an inquiry.

IV. ETHICS FOR REAL ESTATE PROFESSIONALS

A. Key points

1. Ethics refers to a system of moral principles, rules, and standards of conduct.
2. Various organizations promulgate codes of ethics for the real estate business. The most common is the National Association of REALTORS® Code of Ethics, which is based on the golden rule of treating other people the way you would want to be treated.

B. Expectations of brokers and salespersons

1. Exhibit a higher level of knowledge and competency than a nonlicensed individual
2. Protect the interests of clients and treat all parties fairly and honestly
3. Complete all state-mandated disclosures in a timely fashion
4. Fully explain to the client the obligations of the client and the broker in the transaction
5. Disclose all material facts in a timely manner without fraud or misrepresentation

V. DISCLOSURE AND PRACTICING WITHIN LEVELS OF COMPETENCE

A. Competence

1. Real estate professionals are expected to know when they are _____ to perform a task. This includes the following:
 - a. Practicing outside their area of expertise (e.g., a residential broker selling commercial property or a city broker selling farm land)
 - b. Completing and presenting legal documents that are not fully understood by the broker
2. A salesperson or broker becomes competent by taking classes and working with others who are knowledgeable in the area of practice.

B. Disclosure

1. Real estate professionals are expected to fully disclose the following:
 - a. Whom they represent in the transaction
 - b. The obligations of all parties, in regard to the disclosure of material defects
 - c. If they are a principal in the transaction
 - d. If there may be any environmental, material, or other issues requiring disclosure that might impact the property

C. Illegal practice of law

1. Real estate professionals must know when they need to recommend that the party they are working with seek legal advice.
2. Licensees should recommend the use of attorneys, accountants, and other appropriate counsel to buyers and sellers.
3. Licensees are not allowed to give legal advice on any aspect of a real estate transaction.

VI. CALIFORNIA LICENSE LAW**A. Who needs a real estate license**

1. A real estate broker licensee is a natural person or a legal person who _____ lists, sells, exchanges, manages, buys, rents, arranges loans, or negotiates options on real estate, business opportunity, or mobile homes previously registered (used) with the Department of Housing and Community Development.
2. The fine for acting as a licensee without a license is _____.
3. The Department of Real Estate will not issue or renew a full-term four-year license to a person who is in arrears on child support. It may issue a 150-day conditional license, which will automatically be suspended unless evidence is provided that the child support arrearage has been paid.

B. Exceptions

1. The following are not required to have a real estate license:
 - a. Anyone dealing with one's own property, unless the person is in the business of buying and selling real estate paper
 - i. A person who is deemed to be "in the business" of buying and selling real estate paper is required to have a real estate license when selling, acquiring for resale (not as an investment), or exchanging _____.
 - b. A corporation dealing with its own property through its regular officers provided they receive no special compensation
 - c. Anyone holding a duly executed power of attorney
 - d. _____
 - e. Court-appointed persons (e.g., trustees, executors)
 - f. An assistant, secretary, receptionist, or hostess, provided that person does not quote or discuss prices or terms
 - i. An unlicensed assistant may put together information for an ad, but the licensee must approve it.

- ii. If an unlicensed assistant solicits clients, both the assistant and the licensee are liable.
- iii. An unlicensed assistant may not respond to inquiries from the web or telephone.
- g. Banks, savings and loans, escrow companies, and their employees

C. Partnerships

- 1. There is not a partnership license; however, a broker can be a partner with
 - a. another broker;
 - b. a salesperson subject to the supervision of the broker partner; or
 - c. a nonlicensee, provided the nonlicensee does not perform any acts for which a license is required.

D. Corporate broker's license

- 1. A corporate broker's license is issued in the name of the corporation.
- 2. The corporation must identify the person who holds the broker's license as their designated broker-officer.
- 3. The designated broker-officer may also have an additional license in the broker's name.

E. Duty to review

- 1. The broker of record has a duty to review, oversee, inspect, and manage all documents that may have a material effect on the rights or obligations of a party to the transaction.
 - a. The broker may delegate this authority in writing to another broker or a salesperson.

F. Operating under a fictitious business name (doing business as [d/b/a])

- 1. The business must file a fictitious business name statement with the county clerk in any county in which the business is operating.
- 2. This d/b/a statement must be renewed every five years.
- 3. The business must provide the Department of Real Estate with a copy of the d/b/a filing.

G. Prepaid Rental Listing Service (PRLS) license

- 1. A PRLS company supplies prospective tenants with listings of residential real properties and charges advance fees for these lists.
- 2. A PRLS may be operated by either a real estate broker or a designated PRLS agent.
- 3. PRLS agents must obtain a two-year license that is issued by the Real Estate Commissioner.

H. Salesperson's license

1. A salesperson is a natural person who is employed by a broker, for a fee, to perform any of the acts the employing broker may perform.
2. _____.
3. The Real Estate Commissioner requires salespersons to have a _____. _____.
4. A broker licensee can agree to work for another broker in the capacity of a salesperson but must have a written employment agreement and be supervised.
5. Salespersons and brokers working for another broker are referred to as associate licensees.
 - a. Associate licensees have the same fiduciary obligations to clients and the same duty of honesty and fair dealing to third parties as the broker.

VII. LICENSING REQUIREMENTS**A. Real estate salesperson's license**

1. Education requirement
 - a. Successful completion of three semester-long college-level courses: Real Estate Principles, Real Estate Practice, and one elective course (e.g., Legal Aspects of Real Estate)
2. Experience requirement
 - a. None
3. Other requirements
 - a. After passing the licensing exam, an applicant has one year to apply for a license
 - b. All real estate salesperson licenses are issued for four-year terms

B. Real estate broker's license

1. Education requirement
 - a. _____
 - i. Five are mandatory
 - ii. Three are electives
 - iii. May be eligible to obtain credit for previous college classes

2. Experience requirement
 - a. Two years of experience in a real estate-related profession, or a four-year college degree with a major or minor in real estate
3. Other requirements
 - a. All real estate broker licenses are issued for four-year terms
 - b. Renewal of a broker's license requires the completion of 45 hours of continuing education

C. License cancellation

1. In the event of a death, or the suspension, revocation, or expiration of a broker's license, the active status of all the broker's salespersons are canceled.
 - a. Cancellation is temporary. It is not the same as the revocation or loss of a license. It means the licensee cannot perform any acts for which a license is required.
2. When licensees quit or are terminated, their license is canceled.
 - a. Brokers must notify the Real Estate Commissioner within 10 days through a transfer notice form.
 - b. If a licensee is fired for cause, a notice—along with a certified written statement of facts—must be sent to the commissioner.

D. Continuing education requirements

1. Licensees who were required to have all three statutory/prelicense courses (Real Estate Principles, Real Estate Practice, and one additional course) must complete 45 hours of DRE-approved continuing education.
2. Real estate brokers renewing their license for the first time must complete 45 hours of DRE-approved continuing education.
3. For subsequent renewals, all real estate brokers and salespersons must complete 45 hours of DRE-approved continuing education.
4. If the continuing education requirements are not met by the end of the four-year term, the license is canceled and the licensee has a two-year grace period to complete continuing education requirements, pay a late fee, and renew the license.
 - a. During the grace period, the licensee cannot perform any acts for which a license is required (including receiving compensation for licensed acts) until the continuing education is completed and the license is renewed.

UNIT 8 GLOSSARY REVIEW

APR	EPA	Regulation Z
attorney	Equal Credit Opportunity	three
broker of record	Act	two
cold calling	gas	visually
environmental impact report (EIR)	golden rule	written employment
	independently	contract

1. California law requires brokers to _____ inspect property.
2. The _____ expresses the relationship of the total finance charge to the amount financed.
3. The NAR Code of Ethics is based on the _____.
4. Brokers and salespersons must check the National Do Not Call Registry before _____.
5. An exception to the real estate licensing law is an _____ who is performing duties as such.
6. The _____ has a duty to review all documents from the parties to a transaction.
7. PRLS agents operate under a _____-year license term.
8. A real estate salesperson can never work _____.
9. The Real Estate Commissioner requires salespersons to have a _____.
10. To obtain a salesperson's license, an applicant must complete _____ college-level courses.
11. Most environmental issues fall under the jurisdiction of the _____.
12. Radon is a naturally occurring _____.
13. The Truth in Lending Act, which requires disclosure of the true cost of borrowing for consumer credit transactions, is implemented by _____.
14. The law that is intended to make consumer credit available with fairness and impartiality is the _____.
15. The document that describes the potential impact of a proposed project on the environment is an _____.

UNIT 8 QUIZ

1. California law requires sellers of one- to four-unit residential properties to deliver which document to the buyer?
 - A. Closing Disclosure
 - B. Loan Estimate
 - C. TDS
 - D. Buyer's closing statement
2. Another way of describing a latent defect is a
 - A. hidden fact.
 - B. patent defect.
 - C. known fact.
 - D. secret.
3. Federal law requires sellers to make certain disclosures regarding lead-based paint on houses built before
 - A. February 1, 2008.
 - B. July 1, 1998.
 - C. November 1, 1988.
 - D. January 1, 1978.
4. Megan's Law deals with the registration and disclosure of
 - A. sex offenders.
 - B. drug dealers.
 - C. terrorists.
 - D. con artists.
5. The Equal Credit Opportunity Act prohibits discrimination based on
 - A. bad credit.
 - B. poor employment record.
 - C. dependence on public assistance.
 - D. insufficient income and assets.
6. Brokers and salespeople may call consumers after they have made an inquiry without violating the National Do Not Call Registry rules for
 - A. one month.
 - B. three months.
 - C. five months.
 - D. six months.
7. The fine for an individual who performs acts requiring a license but does not have a license is
 - A. \$20,000.
 - B. \$50,000.
 - C. \$100,000.
 - D. \$250,000.
8. When is a real estate license *NOT* required?
 - A. Transactions involving investment properties
 - B. Transactions involving one's own property
 - C. When the person facilitating the transaction only charges a minimal amount
 - D. Transactions involving a friend or family member's property
9. A broker can enter into a partnership with
 - A. another broker.
 - B. a salesperson employed by the broker.
 - C. a non-licensee.
 - D. all of these.
10. A broker operating under a DBA must provide which person or entity with a copy of the DBA statement?
 - A. Bureau of Real Estate
 - B. Commissioner of Corporations
 - C. DBA Commissioner
 - D. The broker's lawyer
11. DBAs must be renewed every
 - A. three years.
 - B. five years.
 - C. seven years.
 - D. 10 years.
12. To obtain a real estate salesperson's license, a person must
 - A. be a high school graduate.
 - B. have two years of experience in a related field.
 - C. have a college degree.
 - D. complete three specified college-level classes.
13. To obtain a real estate broker license, a person must
 - A. either have two years of experience as a salesperson or a college degree with a major or minor in real estate, plus have completed eight specified college-level classes.
 - B. have two years of experience as a real estate salesperson.
 - C. be a high school graduate.
 - D. have a college degree with a major or minor in real estate.

14. Both broker and salesperson licenses are issued for
 - A. 18 months.
 - B. two years.
 - C. three years.
 - D. four years.
15. How many hours of continuing education must real estate licensees complete every four years in order to renew their license?
 - A. 3
 - B. 15
 - C. 18
 - D. 45
16. The disclosures required of a seller on the transfer disclosure statement include all of the following *EXCEPT*
 - A. land and soil conditions.
 - B. structural issues.
 - C. whether the seller likes the property.
 - D. encroachment.
17. It is a standard brokerage practice to recommend that buyers of residential property have
 - A. a property inspection.
 - B. an accountant view the property before they buy it.
 - C. the property torn down and then rebuilt before the close of escrow to discover latent defects.
 - D. no inspections of any kind because all existing homes will have problems.
18. Environmental issues are considered
 - A. the responsibility of the EPA, not real estate licensees.
 - B. an area in which real estate licensees must be experts in order to advise the public on how to be safe.
 - C. an area in which brokers do not need to have knowledge.
 - D. material facts that must be disclosed by sellers and brokers.
19. Which of the following groups is *MOST* vulnerable to serious and potentially fatal neurological damage from elevated levels of lead in residential properties?
 - A. Smokers
 - B. Children
 - C. Pets
 - D. Real estate agents
20. On residential properties built before January 1, 1978, sellers must offer buyers a 10-day opportunity to have the home tested for
 - A. radon gas.
 - B. lead-based paint.
 - C. asbestos.
 - D. septic tank problems.
21. Brokers should be aware of which condition that may indicate the existence of mold?
 - A. Musty smell
 - B. Water leaks
 - C. High humidity
 - D. All of these
22. If real estate licensees have actual knowledge that a property has been used as a methamphetamine lab, they have a duty to disclose that to a buyer because
 - A. the drug dealer might come back to the property.
 - B. the property might be stigmatized so the value might be less.
 - C. the property may constitute an environmental hazard due to the chemicals used to manufacture the drugs.
 - D. meth labs are a neighborhood nuisance.
23. An example of an activity that may result in a property being deemed undesirable and possibly unmarketable is if it was
 - A. the scene of a gruesome murder.
 - B. perceived as being haunted.
 - C. the past home of a notorious criminal.
 - D. all of these.
24. The annual percentage rate (APR) will typically be
 - A. higher than the “face rate” on the promissory note.
 - B. lower than the nominal interest rate.
 - C. the same as the rate on the promissory note.
 - D. a “manufactured” rate created by the federal government that isn’t related to the real interest rate and costs of a loan.
25. Loans that are *NOT* subject to federal Truth in Lending Act rules include
 - A. business loans.
 - B. loans to corporations.
 - C. seller financing.
 - D. all of these.

26. The three-day right of rescission does *NOT* apply to

- home purchase loans.
- refinances of owner-occupied, one- to four-unit properties.
- home equity loans.
- HELOC loans.

27. All of the following items in a real estate advertisement would trigger the full disclosure requirements under Regulation Z *EXCEPT*

- amount of down payment.
- asking price.
- interest rate.
- monthly payments.

28. Licensees are

- expected to explain all of the legal ramifications of transactions they are involved in.
- not allowed to give legal advice.
- more knowledgeable about real estate transactions than most attorneys so they should share their knowledge of real estate law freely with the public.
- required to explain the impact of court cases and code sections to their clients.

29. Which of the following acts can an unlicensed real estate assistant perform?

- Put together information for an advertisement
- Solicit clients for the agent
- Answer client questions about the transaction
- Respond to inquiries on the internet

30. Salespersons and brokers working for another licensed broker are called

- REALTORS®.
- agents.
- associate licensees.
- employees.

GLOSSARY REVIEW AND QUIZ ANSWER KEYS

Unit 8 Glossary Review Answer Key

1. visually
2. APR
3. golden rule
4. cold calling
5. attorney
6. broker of record
7. two
8. independently
9. written employment contract
10. three
11. EPA
12. gas
13. Regulation Z
14. Equal Credit Opportunity Act
15. environmental impact report (EIR)

Unit 8 Quiz Answers

1. **C** The seller has the responsibility of filling out and delivering the TDS to the buyer. The broker should never fill out the seller's portion of the form.
2. **A** Latent defects are deficiencies in a property that are hidden from view. Patent defects are ones that are visible. Both sellers and real estate licensees are liable for disclosing latent and patent defects if they know of them or should have known of them.
3. **D** January 1, 1978, is the trigger date; if a residential property was built before that date, the sellers are required to make certain disclosures and deliver an EPA booklet regarding lead-based paint.
4. **A** Megan's Law deals with the registration and disclosure on a website of the location of sex offenders. A real estate licensee's obligation is to make consumers aware of the website. Real estate licensees should not disclose where they perceive sex offenders are located.
5. **C** The Equal Credit Opportunity Act is a federal law that prohibits discrimination in credit transactions based on certain protected classes, including individuals who are dependent upon public assistance.
6. **B** The do-not-call rules include an exception where businesses can call consumers for three months after that consumer has made an inquiry to that business. This would include real estate consumers who call on ads or visit open houses.
7. **A** The fine for an individual without a license who acts as a licensee is \$20,000.
8. **B** There are a number of exceptions when a real estate license is not required. The most significant is that individuals do not have to be licensed when dealing with their own property, unless they are buying and selling eight or more loans or real property sales contracts in a calendar year (called "being in the business" of transacting real property security transactions).
9. **D** Real estate brokers can form partnership brokerage operations with other brokers, salespeople employed by the broker, and even nonlicensees (so long as the nonlicensee is not performing acts for which a license is required).
10. **A** A DBA statement must be filed with the county clerk in the county in which the business operates, and a copy must be delivered to the Bureau of Real Estate.
11. **B** A DBA is effective for five years from December 31 of the year in which it was filed.

12. **D** There are no experience requirements in order to obtain a real estate salesperson license. The only educational requirement is to have completed two semester-long college-level courses in Real Estate Principles and Real Estate Practice, and one additional elective course (typically Legal Aspects of Real Estate).

13. **A** There is a requirement of two years of experience as a real estate salesperson in order to obtain a real estate broker's license, but this can be waived if the applicant has a four-year college degree with a major or minor in real estate. Additionally, the applicant must complete eight specified college-level classes.

14. **D** Broker and salesperson licenses are issued for four-year terms.

15. **D** To renew their licenses, brokers and salespersons must fulfill a 45-hour continuing education requirement every four years.

16. **C** Sellers are required to disclose any knowledge they possess of all of the items listed, except whether they like the property or any other personal preferences.

17. **A** Most brokers recommend to buyers of residential property that they have a home inspection by a qualified home inspector. In the absence of special circumstances indicating that such an inspection would not be necessary (e.g., the buyer is a general contractor), it would be considered a failure on the part of the broker to not make such a recommendation.

18. **D** While brokers are not expected to be experts in environmental issues, they must disclose anything they have actual knowledge of. They can avoid liability for what they do not have knowledge of by giving the *Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants* booklet to consumers.

19. **B** Young children are particularly vulnerable to lead in their living environments.

20. **B** Sellers of housing built before January 1, 1978, must give the EPA booklet on lead-based paint to purchasers and offer them a 10-day period to have the dwelling inspected for lead. Buyers may waive the inspection and may terminate the contract during the 10-day period. Sellers are not required to do a lead inspection or removal.

21. **D** All of the items listed are indicators that mold may be present, but hidden.

22. **C** The manufacture of methamphetamine involves the use of extremely toxic substances that may be impossible to remove from the structure.

23. **D** All of these situations can stigmatize a property and deter any buyers. It is the duty of the real estate professional to disclose material facts, which are defined as those that would affect the decision of the purchaser.

24. **A** The APR includes the interest paid plus costs. Therefore, it will typically be higher than the interest rate stated on the promissory note, which is referred to as the "face rate" or the "nominal rate."

25. **D** All of the types of loans listed are exempt from the Truth in Lending Act.

26. **A** The three-day right of rescission does not apply to home purchase or construction loans.

27. **B** The asking price and/or APR are the only specific finance terms allowed in an advertisement without triggering full Regulation Z disclosure. General statements such as low down payment are allowed.

28. **B** While the line is sometimes hard to define, real estate licensees are not allowed to give legal advice. The only legally related thing that real estate licensees are allowed to do is to fill in blank spaces on pre-printed forms without excessively modifying the forms.

29. **A** An unlicensed assistant can design an advertisement for a real estate licensee, but the licensee must approve it before it is published.

30. **C** Salespersons and brokers working for another broker are called associate licensees. Associate licensees have the same fiduciary obligations to clients and the same duties of honesty and fair dealing to third parties as the broker.

APPENDIX: ANSWERS TO OUTLINE FILL-INS

Answers are listed in the order of their appearance on the page.

Unit 1: Property Ownership and Land-Use Controls

PAGE 3

Appurtenances
Surface
Subsurface
Air
attached to the land
being permanent
house
fence

PAGE 4

the doctrine of prior appropriation
flowing water (R = river)
standing water (L = lake)
Accession
accretion
attachment
Avulsion
Erosion
third party
deed
attached to the land
included
bill of sale

PAGE 5

attached to land or an improvement
fixture
appurtenance
Built-in
freestanding
house keys, garage door openers, swimming pool cover
written agreement
excluded
included

PAGE 6

included in writing
excluded in writing

PAGE 7

Land is not a liquid asset
create or confirm a legal description
property boundaries
measures in feet, compass degrees
shape or boundaries
reference points
point of beginning (POB)
“starting at or commencing at.”

PAGE 10

range
tier
640 acres
43,560
map
the plat is recorded
urban residential

PAGE 11

control growth
buffer zone

PAGE 12

building permit
compliance with building codes
safety of buildings
Certificates of occupancy

PAGE 13

nonconforming use
grandfathered
church or day care center

PAGE 14

buyer's responsibility
meet the buyer's needs

Unit 2: Rights and Interests in Land

PAGE 23

public control
land use
zoning
developed
private land
condemnation
all other liens
ad valorem

board of appeals
Special assessments
assessment roll

PAGE 24

Document	ORs give	EEs receive
Deed	Grantor	Grantee
Lease	Lessor	Lessee
Mortgage	Mortgagor (borrower)	Mortgagee (lender)

amount
ownership
possession

PAGE 25

Maximum or largest
forever
qualified fee
normally a gift
deed condition
fee simple absolute
reverter
remainderman
possession
less than freehold estate
chattel real

PAGE 26

30 days
Specific termination date—no advance notice
does not
Renews automatically
not the legal owner

PAGE 27

Buyers should contact an attorney
right to use the lands
dominant
servient
Transfers with the land
across a neighbor's land
in gross
utility
by necessity
private owner
revocable
it will transfer
deed

PAGE 28

privately
Covenant
lawful purposes

lien
waiver
satisfaction
priority

PAGE 29

notice of nonresponsibility or notice of completion
payment of debt
all property
protect a primary residence
before or after closing

PAGE 30

revocable

Unit 3: Transfer of Property, Recording, Title Insurance, and Taxation

PAGE 39

an individual
heirs or devisees
equal to their share
undivided interests
fractional
attorney's advice
without right of survivorship
shares can be unequal
upon death
owner will be responsible

PAGE 40

with right of survivorship
“as joint tenants”
co-owner(s)
Overrides
TTIP
mandatory assessments

PAGE 41

common elements
declaration
tenants in common
member
nonprofit

PAGE 42

own and finance
No deed; no ownership of unit
resort properties
alienation
private grant
public grant
dedication
written deed

PAGE 43

guarantee or prove ownership
18, sane, and sober
grantor
grantee
acceptance by grantee
describe only the land

PAGE 44

delivered
accepted
Grantor
encumbrances
grantor
What I've got, you've got
liability

PAGE 45

Wills must go through probate
holographic will
regularly inspect
permission

PAGE 46

five
Open and notorious occupation
use
non-use
state law
does not prove the validity

PAGE 47

priority
actual
constructive notice
constructive
\$600,000
\$500,000
\$100,000
200 units
\$0.55 per unit
\$110

PAGE 48

chain of title
history

PAGE 49

historical summary
current condition of the title
current status
history
not covered by
Standard exceptions

Special exceptions
CLTA
found after closing

PAGE 50

ALTA
owner's policy
lender's policy
paid once

PAGE 51

lis pendens
cleared
itemized
\$250,000
\$500,000

PAGE 52

two of the last five years
27.5
39
straight-line method

PAGE 53

defer payment
like-kind
Proposition 13
2%
\$7,000
\$4,000
postpone

PAGE 54

No Darn Fooling Around
November 1
December 10
February 1
April 10

Unit 4: Real Estate Contracts, Settlement/Closing Procedures, Escrow, and ProrationsPAGE 63

Actions indicate intent
Can be oral or written
Enforceability
express written documents
Only one party
all essential elements

PAGE 64

minor
duress, fraud, or misrepresentation
in writing

interests in real estate
meeting of the minds

PAGE 65

breach
amendment
offer and acceptance
meeting of the minds
communication of acceptance

PAGE 66

terminates the original offer
rejection
omit material facts
must be disclosed
puffing
Actual fraud
Constructive fraud

PAGE 67

competent parties
18
sane
by a judge
COnsideration
Earnest money is not consideration

PAGE 68

not yet fully performed
part of an offer
Modification
written and signed
contract rights
New contract

PAGE 69

Choose not to sue
completion of the contract
only to seller
money lost

PAGE 70

executory
legal title
equitable title
contingency
earnest money is returned

PAGE 72

recourse
more flexibility
lessor
lessee

PAGE 73

fixed rent
base rent plus expenses
gross income/sales
long-term lease
Expiration date

PAGE 74

unlawful detainer
Notice to Pay or Quit
Loan Estimate form of all closing costs
three business days

PAGE 75

purchase contract
interpleader action
Perfect escrow
Complete escrow
sales price
earnest money
brokerage fee
sales price

PAGE 76

equal amount
seller's last day

Unit 5: Property Valuation and Financial Analysis

PAGE 87

opinion
federally related loans

PAGE 88

not an appraisal
probable price
Actual sales price
Demand
Utility
Scarcity
Transferability

PAGE 89

highest and best use
down

up
basis
all three approaches

PAGE 90

declines
increases

Increasing returns
Decreasing returns

PAGE 91
comparables
within six months
Date of sale

PAGE 92
comps
subtract
add
special purpose properties
not depreciate

PAGE 93
replica
utility
loss of value
Wear and tear
Economic obsolescence
Outside the property boundaries

PAGE 94
116%
\$232,000
generate income
capitalization rate
present value

PAGE 95
It is not an average.

Unit 6: Financing, Mortgages, Deeds of Trust, Lending Practices, and Loan Programs

PAGE 106
evidences the debt

PAGE 107
defaults
entire balance
simple
mortgagor
mortgagee
favored by lenders in California
beneficiary

PAGE 108
Due-on-sale clause
sold

PAGE 109

Waste
– Total debt today
increase yield on a loan

PAGE 110
sold to satisfy the debt
junior liens
missed payments
reinstatement
no post-sale redemption

PAGE 111
deficiency or personal
It does not wipe out secondary liens
Interest-only
balloon

PAGE 113
Mortgagee pays the mortgagor
three-day right of rescission
higher risk

PAGE 114
land
installment

PAGE 115
80%
pay off the full loan
smaller down payment
insures the lender against loss

PAGE 116
owner-occupied
higher loan-to-value ratio
guarantees
parents of veterans
must occupy
100%
eligibility/entitlement

PAGE 117
direct lenders
Mortgage brokers
They act as intermediaries
real estate loans are originated
existing
send payments to a different address
buys all types

Unit 7: Laws of Agency, Listings, Trust Accounts, and Fair Housing

PAGE 127

All contracts
must withhold taxes
signed
own work hours
employs

PAGE 128

fiduciary
Obedience
lawful
Loyalty
Disclosure
Confidentiality
price, terms, and motivation
with permission
Accounting
Reasonable skill and care

PAGE 129

without the ability to bind
seller
buyer
limited ability to bind
employing broker
property owner
power of attorney
sign for principal
employs
pays
express agreement

PAGE 130

written consent
illegal
confidential information
negotiable
are not set by law

PAGE 131

brokerage firm sets its own rates
outside
principal/client
agent/fiduciary

PAGE 132

negotiable
beginning and expiration
seller
buyer
all property owners
seller sells

PAGE 133

unless the seller finds the buyer
procures
Option listing

PAGE 134

principal
general agent
employing broker's knowledge
Maintain the value
Generate income

PAGE 135

by the contract

PAGE 136

structural damage
earnest money
demand account

PAGE 137

mix
Conversion
dependent children
Age
Marital

PAGE 138

for any reason or in any situation
All media
FSBO
Senior housing
80%
55

PAGE 139

channeling
Blockbusting
panic selling
Redlining
life activities

PAGE 140

damage deposit
violence
two years
investigate
keeping all records

PAGE 141

open to the public
at their expense

Unit 8: Practice of Real Estate, California License Law, and DisclosuresPAGE 151

current knowledge
might change a decision
hidden fact

PAGE 152

Environmental Protection Agency (EPA)
material facts that must be disclosed
abatement (removal)
Encapsulation
often a better choice

PAGE 153

sellers
January 1, 1978
waive the inspection
lead inspection or removal
odorless, radioactive gas
typically mitigated

PAGE 154

Remediation

PAGE 155

true cost of obtaining credit
higher
to the lender
all closing costs
appraisal, credit report

PAGE 156

three-day right of rescission
home purchase or construction loans
trigger the full disclosure
property taxes or HOA dues
marital status, age, and public assistance

PAGE 157

three months
not competent

PAGE 158

for another person and for a fee
\$20,000 for individuals and \$60,000 for corporations
eight or more promissory notes secured by real property
or real property sale contracts during one calendar
year

Attorneys while performing duties as attorneys-at-law

PAGE 160

A salesperson can never work independently
written employment contract with their employing
broker

Eight college-level courses

GLOSSARY

abandonment Failure to occupy and use property, which may result in a loss of rights.

abstract of title A short account of what appears in the public record affecting the title of a particular parcel of real property; ordinarily includes a chronological summary of all grants, conveyances, wills, transfers, and judicial proceedings that have in any way affected title, together with all liens and other encumbrances of record, showing whether or not they have been released.

abut To touch, border on, be adjacent to, or share a common boundary with.

acceleration clause Provision in a promissory note or security instrument that allows the lender to declare the entire debt due immediately if the borrower breaches one or more provisions of the loan agreement or is in default in paying on the loan. Also referred to as a call provision.

acceptance 1. Agreeing to the terms of an offer to enter into a contract, thereby creating a binding contract. 2. Taking delivery of a deed from the grantor.

accretion A gradual addition to dry land by the forces of nature, as when waterborne sediment is deposited on waterfront property.

acknowledgment When a person who has signed a document formally declares to an authorized official (usually a notary public) that he signed voluntarily. The official can then attest that the signature is voluntary and genuine (without duress).

acquisition cost The sum required to obtain title to a piece of property. In addition to the purchase price, it typically includes an appraisal fee, title insurance costs, and other closing costs paid by the buyer.

acre An area of land is equal to 43,560 square feet. There are 640 acres in a section of land.

actual age The age of a structure from a chronological standpoint (as opposed to its effective age); how many years it has actually been in existence.

actual notice Actual knowledge of a fact, as opposed to knowledge imputed by law (constructive notice).

adaptation Used to determine if something is a fixture. If the item is attached and has been adapted to the property, it is most likely a fixture.

addendum Additional information attached to a contract at the time the agreement is formed. It may add contractual provisions or provide information.

adjacent Nearby, next to, bordering, or neighboring; may or may not be in actual contact.

adjustable-rate mortgage (ARM) A loan in which the interest rate is periodically increased or decreased to reflect changes in the cost of money. Compare: fixed-rate.

administrator A person appointed by the probate court to manage and distribute the estate of a deceased person, when no executor is named in the will or there is no will.

ad valorem A Latin phrase that means “according to value,” used to refer to taxes that are based on the value of property.

adverse possession Acquiring title to real property that belongs to someone else by taking possession of it without permission, in the manner and for the length of time prescribed by statute.

affirm 1. To confirm or ratify. 2. To make a solemn declaration that is not under oath.

agency A relationship of trust created when one person (the principal) grants another (the agent) authority to represent the principal in dealings with third parties.

agency by estoppel When third parties are given the impression that someone who has not been authorized to represent another is that person’s agent, or else given the impression that an agent has been authorized to perform acts that are, in fact, beyond the scope of the agent’s authority. Also called ostensible or apparent agency.

agency, dual See: dual agency.

agent A person authorized to represent another (the principal) in dealings with third parties.

agent, general See: general agent.

agent, special See: special agent.

agent, universal See: universal agent.

air rights The right to undisturbed use and control of the airspace over a parcel of land; may be transferred separately from the land.

alienation The transfer of ownership or an interest in property from one person to another, by any means.

alienation, involuntary Transfer of an interest in property against the will of the owner, or without action by the owner, occurring through operation of law (e.g., a mortgage foreclosure), natural processes, or adverse possession.

alienation, voluntary Voluntary transfer of an interest in property from one person to another.

alienation clause A provision in a security instrument (mortgage or deed of trust) that gives the lender the right to declare the entire loan balance due immediately if the borrower sells or otherwise transfers the security property. Also called a due-on-sale clause.

amendment to a contract An amendment is a mutually agreed change to an existing agreement. It can change the terms or the original contract.

amenities Features of a property that contribute to the pleasure or convenience of owning it, such as a fireplace, a beautiful view, or its proximity to a good school.

Americans with Disabilities Act (ADA) A federal law enacted to assure access to “places of public accommodation” for the disabled. It applies to places of business and public services.

amortization Gradual repayment of a debt with installment payments that include both principal and interest, over a set period of time. See also: loan, amortized.

amortization, negative The addition of unpaid interest to the principal balance of a loan, thereby increasing the amount owed.

annexation Attaching personal property to real property, so that it becomes part of the real property (a fixture) in the eyes of the law. See also: fixture.

annual percentage rate (APR) All the charges that the borrower will pay for a loan (including the interest, origination fee, borrower-paid discount points, and mortgage insurance costs), expressed as an annual percentage of the loan amount.

appraisal An opinion of the value of a piece of property by an appraiser as of a particular date. Also called valuation.

appraiser One who estimates the value of property, especially an expert qualified to do so by training and experience. State and federal laws require appraisers to be licensed.

appreciation An increase in value; the opposite of depreciation.

appropriation, prior See: prior appropriation.

appurtenance Anything that is incident to, attached to, or pertains to the land, but is not necessarily a part of it. An appurtenance is ordinarily transferred with the land, but some appurtenances may be transferred separately.

appurtenant easement See: easement appurtenant.

APR See: annual percentage rate.

area 1. Locale or region. 2. The size of a surface, usually in square units of measure, such as square feet or square miles.

ARM See: adjustable-rate mortgage (ARM).

arm's length transaction 1. A transaction in which both parties are informed of the property's merits and shortcomings, neither is acting under unusual pressure, and the property has been exposed on the open market for a reasonable length of time. 2. A transaction in which there is no preexisting family or business relationship between the parties.

assemblage Combining two or more adjoining properties into one tract.

assessment 1. The valuation of property for purposes of taxation. 2. A nonrecurring specific charge against property for a particular purpose, such as the installation of street lights or sewers.

assessment appeal A property owner's appeal to a board of assessment appeals regarding the valuation of property for tax purposes.

assessor An official who determines the value of property for taxation.

asset Anything of value that a person owns.

assets, liquid Cash and other assets that can be readily turned into cash (liquidated), such as stock. Real estate is not considered a liquid asset.

assign 1. (verb) To transfer rights (especially contract rights) or interests to another. 2. (noun) A successor in interest to property, other than an heir. See also: heirs and assigns.

assignee One to whom rights or interests have been assigned.

assignment 1. A transfer of contract rights from one person to another. 2. In the case of a lease, the transfer by the original tenant of his or her entire leasehold estate to another. Compare: sublease.

assignor One who has assigned a right or interest to another.

associate broker (broker associate) A common term for a licensee who holds a broker license and is employed by and supervised by an employing broker or managing broker.

assume To take on legal responsibility for a debt or other obligation that was formerly the responsibility of another.

assumption When a property buyer takes on personal liability for paying off the seller's existing mortgage.

assumption fee A fee paid to the lender, usually by the buyer, when a mortgage is assumed.

attachment Court-ordered seizure of property belonging to a defendant in a lawsuit, so that it will be available to satisfy a judgment if the plaintiff wins. In the case of real property, attachment creates a lien.

attachments, natural Plants growing on a piece of land, such as trees, shrubs, or crops. See: emblems.

attorney-in-fact Any person authorized to represent another created by a power of attorney; not necessarily a lawyer (an attorney-at-law).

auditing Verification and examination of records, particularly the financial accounts of a business or other organization.

authority, actual Authority actually given to an agent by the principal, either expressly or by implication.

authority, implied An agent's authority to do everything reasonably necessary to carry out the principal's express orders.

bad debt/vacancy factor A percentage deducted from a property's potential gross income to determine the effective gross income, estimating the income that will probably be lost because of vacancies and tenants who don't pay.

balance sheet A summary of facts showing the financial condition of an individual or a business, including a detailed list of assets and liabilities. Also called a balance sheet.

balloon payment A payment on a loan (usually the final payment) that is significantly larger than the regular installment payments.

bankruptcy 1. A situation resulting when the liabilities of an individual, corporation, or firm exceed the assets. 2. Declaration by a court that an individual, corporation, or firm is insolvent, with the result that the assets and debts are administered under bankruptcy laws.

base line In the rectangular survey system, a main east-west line from which township lines are established. Each principal meridian has one base line associated with it.

basis A figure used in calculating a gain on the sale of real estate for federal income tax purposes. Also called cost basis.

basis, adjusted The owner's initial basis in the property, plus capital expenditures for improvements, and minus any allowable depreciation or cost recovery deductions.

basis, initial The amount of the owner's original investment in the property; what it cost to acquire the property, which may include closing costs and certain other expenses, as well as the purchase price.

benchmark A surveyor's mark at a known point of elevation on a stationary object, used as a reference point in calculating other elevations in a surveyed area; often a metal disk set into cement or rock.

beneficiary 1. One for whom a trust is created and on whose behalf the trustee administers the trust. 2. The lender in a deed of trust transaction.

bequeath To transfer personal property to another by will.

bequest Personal property (including money) that is transferred by will.

bilateral contract A contract in which each party has made a binding promise to perform (as distinguished from a unilateral contract).

bill of sale A document used to transfer title to personal property from one person to another.

binder 1. An agreement to consider an earnest money deposit as evidence of the potential buyer's good faith when she makes an offer to buy a piece of real estate. 2. An instrument providing immediate insurance coverage until the regular policy is issued. 3. Any payment or preliminary written statement intended to make an agreement legally binding until a formal contract has been drawn up.

binding and enforceable A valid agreement that will obligate both parties to their duties and can be enforced through the court system.

blanket mortgage A mortgage that covers more than one parcel of property. Commonly contains a partial release clause to release individual properties as the balance is paid down.

blighted area An area where the real property has declined in value significantly.

block In a subdivision, a group of lots surrounded by streets or unimproved land.

blockbusting Attempting to induce owners to list or sell their homes by predicting that members of another race or ethnic group, or people suffering from some disability, will be moving into the neighborhood; this violates antidiscrimination laws. Also called panic selling.

blue laws Statutes or ordinances restricting the transaction of business or other activities on Sundays and certain holidays.

blue sky laws Laws that regulate the promotion and sale of securities in order to protect the public from fraud.

board of directors The body responsible for governing a corporation on behalf of the stockholders, which oversees the corporate management.

bona fide In good faith; genuine; not fraudulent.

bonus An extra payment, over and above what is strictly due.

boot A term used in connection with tax-free exchanges, when the properties exchanged are not equal in value, to refer to whatever is given (i.e., cash, services) to make up the difference in value—for example, in an exchange of real property, if one party gives the other cash in addition to real property, the cash is boot.

boundary The perimeter or border of a parcel of land; the dividing line between one piece of property and another.

bounds Boundaries. See also: metes and bounds.

breach Violation of an obligation, duty, or law; especially an unexcused failure to perform a contractual obligation.

broker, real estate One who is licensed to represent members of the public in real estate transactions for compensation.

brokerage A real estate broker's business.

brokerage fee The commission or other fee charged by a real estate broker for their services.

brokerage firm A real estate business with an employing or managing broker and broker associates or salespeople.

budget mortgage A loan in which the monthly payments include a share of the property taxes and insurance, in addition to principal and interest; the lender places the money for taxes and insurance in an escrow account. Sometimes called a PITI loan.

buffer zone A zoning area between two incompatible zoning areas.

building codes Regulations that set minimum standards for construction methods and materials.

building restrictions Rules concerning building size, placement, or type; they may be public restrictions (e.g., zoning ordinance) or private restrictions (e.g., CC&Rs).

bulk transfer The sale of all or a substantial part of the merchandise, equipment, or other inventory of a business, not in the ordinary course of business.

bulk transfer law A law requiring a seller who negotiates a bulk transfer (usually in connection with the sale of the business itself) to furnish the buyer with a list of creditors and a schedule of the property being sold, and to notify creditors of the impending transfer.

bundle of rights The rights inherent in ownership of property, including the right to use, lease, enjoy, encumber, will, sell, or do nothing with the property.

business opportunity A business that is for sale.

buydown The payment of discount points to a lender to reduce (buy down) the interest rate charged to the borrower; especially when a seller pays discount points to help the buyer/borrower qualify for financing.

buyer representation agreement A contract in which a real estate broker agrees to try to locate suitable property for the other party (the buyer) in exchange for a commission.

bylaws The rules and regulations that govern the operations of a corporation, or of a unit owners' association in a condominium.

cancellation Termination of a contract without undoing acts that have already been performed under the contract. Compare: rescission.

capacity The legal ability or competency to perform some act, such as enter into a contract or execute a deed or will. See also: competent.

capital Money (or other forms of wealth) available for use in the production of more money.

capital assets Assets held by a taxpayer other than (1) property held for sale to customers in the ordinary course of the taxpayer's business, and (2) depreciable property or real property used in the taxpayer's trade or business. Thus, real property is a capital asset if it is owned for personal use or for profit.

capital expenditures Money spent on improvements and alterations that add to the value of the property and/or prolong its life.

capital gain Profit realized from the sale of a capital asset. If the asset was held for more than one year, it is a long-term capital gain; if the asset was held for one year or less, it is a short-term capital gain.

capital improvement Any improvement that is designed to become a permanent part of the real property or that will have the effect of significantly prolonging the property's life.

capitalization A method of appraising real property by converting the anticipated net income from the property into the present value. Also called the income approach to value.

capitalization rate A percentage used in capitalization ($\text{net income} = \text{capitalization rate} \times \text{value}$). It is the rate believed to represent the proper relationship between the value of the property and the income it produces; the rate that would be a reasonable return on an investment of the type in question, or the yield necessary to attract investment of capital in property like the subject property.

capitalize 1. To provide with cash, or capital. 2. To estimate the present value of an asset using capitalization.

capital loss A loss resulting from the sale of a capital asset; it may be long-term or short-term, depending on whether the asset was held for more than one year, or for one year or less.

cash flow The residual income after deducting from effective gross income all operating expenses and debt service.

caveat emptor A Latin phrase meaning "let the buyer beware"; it expresses the idea that a buyer is expected to examine property carefully before buying, instead of relying on the seller to disclose problems. This was once a firm rule of law, but it has lost most of its force, especially in residential transactions.

CC&Rs A declaration of covenants, conditions, and restrictions; usually recorded by a developer to place restrictions on all lots within a new subdivision.

certificate of eligibility A document issued by the Department of Veterans Affairs as evidence of a veteran's eligibility for a VA-guaranteed loan.

certificate of occupancy A statement issued by a local government agency (such as the building department) verifying that a newly constructed building is in compliance with all building codes and may be occupied.

certificate of reasonable value A document issued by the Department of Veterans Affairs, setting forth the current market value of a property, based on a VA-approved appraisal.

certificate of sale The document given to the purchaser at a mortgage foreclosure sale; becomes a sheriff's deed only after the redemption period expires.

cesspool An underground pit used to catch and temporarily hold sewage while it decomposes and leaches into the surrounding soil.

chain of title The chain of deeds (and other documents) transferring title to a piece of property from one owner to the next, as disclosed in the public record; more complete than an abstract.

chattel An article of personal property.

civil law The body of law concerned with the rights and liabilities of one individual in relation to another; includes contract law, tort law, and property law. Compare: criminal law.

civil rights Fundamental rights guaranteed to individuals by the law. The term is primarily used in reference to constitutional and statutory protections against discrimination or government interference.

Civil Rights Act of 1866 A federal law that forbids discrimination on racial grounds in all business transactions. It was upheld by the U.S. Supreme Court in the *Jones v. Mayer* decision, which reinforced the idea that "racial" applies to discrimination based on ethnic groups.

civil suit A lawsuit in which one private party sues another private party (as opposed to a criminal suit, in which an individual is sued—prosecuted—by the government).

Clean Air Act A federal law regulating the emission of air pollutants.

Clean Water Act A federal law intended to reduce water pollution.

clear title A good title to property, free from encumbrances or defects; marketable title.

client One who employs a broker, lawyer, appraiser, or other professional. A real estate broker's client may be the seller, the buyer, or both.

closing The final stage in a real estate transaction, when the seller receives the purchase money, the buyer receives the deed, and title is transferred. Also called settlement or escrow.

costs Expenses incurred in the transfer of real estate in addition to the purchase price—for example, the appraisal fee, title insurance premium, broker's commission, and state deed tax. Also called settlement costs.

closing date The date on which all the terms of a purchase agreement must be met, or the contract is terminated.

Closing Disclosure New form mandated by the TILA-RESPA rule that helps consumers to understand all of the costs of the transaction. It must be provided to consumers three business days before closing.

closing statement A document that presents a final, detailed accounting for a real estate transaction, listing each party's debits and credits and the amount each will receive or be required to pay at closing. Also called a settlement statement.

cloud on title A claim, encumbrance, or apparent defect that makes the title to a property unmarketable. See also: title, marketable.

code of ethics A body of rules setting forth accepted standards of conduct, reflecting principles of fairness and morality—especially one that the members of an organization are expected to follow.

codicil An addition to or revision of a will.

collateral Anything of value used as security for a debt or obligation.

collusion An agreement between two or more persons to defraud another.

color of title Title that appears to be good title, but which in fact is not; commonly based on a defective instrument, such as an invalid deed.

commercial property Property zoned and used for business purposes, such as a restaurant or an office building; as distinguished from residential, industrial, or agricultural property.

commingling Illegally mixing trust funds held on behalf of a client with personal funds.

commission 1. The compensation paid to a broker for services in connection with a real estate transaction (usually a percentage of the sales price). 2. A group of people organized for a particular purpose or function; often a governmental body.

commitment In real estate finance, a lender's promise to make a loan. A loan commitment may be "firm" or "conditional"; a conditional commitment is contingent on something, such as a satisfactory credit report on the borrower.

commitment, title insurance The binding promise from a title insurance company to insure the merchantability of title based on restrictions and exceptions listed in the title report.

common areas 1. In a building with leased units or spaces, the areas that are available for use by all the tenants. 2. The common elements in a condominium.

common elements The land and improvements in a condominium or other common interest development that are owned and used collectively by all the residents, such as parking lots, hallways, and recreational facilities available for common use. Also called common areas.

common elements, limited Common elements that are reserved for the use of a certain unit or certain units, to the exclusion of other units; examples include assigned parking spaces and storage lockers.

common interest ownership The form of ownership that is involved in condominiums, town houses, cooperatives, and time-shares.

common law 1. Early English law. 2. Long-established rules of law based on early English law. 3. Rules of law developed in court decisions, as opposed to statutory law.

communication of acceptance A concept of contract law requiring that when an offeree accepts a contract, the agreement is not binding on all parties until that acceptance has been communicated to the offeror.

community property In certain states, property owned jointly by a married couple, as distinguished from each spouse's separate property; generally, any property acquired through the labor or skill of either spouse during marriage.

competent 1. Of sound mind, for the purposes of entering into a contract or executing a legal instrument. 2. Both of sound mind and having reached the age of majority.

compliance inspection A building inspection to determine, for the benefit of a lender, whether building codes, specifications, or conditions established after a prior inspection have been met before a loan is made.

concurrent ownership Shared ownership of one piece of property by two or more individuals, each owning an undivided interest in the property with equal rights of possession (as in a tenancy in common or joint tenancy). Also called multiple ownership, co-ownership.

condemnation 1. Taking private property for public use through the government's power of eminent domain. 2. A declaration that a structure is unfit for occupancy and must be closed or demolished.

condition 1. A provision in a contract that makes the parties' rights and obligations depend on the occurrence (or nonoccurrence) of a particular event. See also: contingency clause. 2. A provision in a deed that makes title depends on compliance with a particular restriction.

conditional use permit A permit that allows a special use, such as a school or hospital, to operate in a neighborhood where it would otherwise be prohibited by the zoning. Also called a special use permit or special exception permit.

condominium Property developed for common interest ownership, where each co-owner has a separate interest in an individual unit, combined with an undivided interest in the common elements of the property.

condominium association The unit owners association of a condominium. See also: unit owners association (HOA).

confirmation of sale Court approval of a sale of property by an executor, administrator, or guardian.

conforming loan A loan made in accordance with the standardized underwriting criteria of the major secondary market agencies, Fannie Mae and Freddie Mac, and which therefore can be sold to those agencies.

conformity, principle of See: principle of conformity.

conservation 1. Preservation of structures or neighborhoods in a sound condition. 2. Preservation or controlled use of natural resources for long-term benefits.

conservator A person appointed by a court to take care of the property of another who is incapable of taking care of it on her own.

consideration Anything of value given to induce another to enter into a contract, such as money, goods, services, or a promise. Sometimes called valuable consideration. See also: love and affection.

conspiracy An agreement or plan between two or more persons to perform an unlawful act.

construction mortgage A loan to finance the cost of constructing a building, usually providing that the loan funds will be advanced in installments as the work progresses. Also called an interim loan.

constructive Held to be so in the eyes of the law, even if not so in fact. See also: constructive eviction; constructive notice.

constructive eviction The legal concept that if a landlord does something or fails to perform a duty and the result is that a property is no longer fit for the lessee's intended use, the lessee may move out and be relieved of future obligations under the lease.

constructive notice Knowledge of a fact imputed to a person by law. People are held to have constructive notice of something when they should have known it (because they could have learned it through reasonable diligence or an inspection of the public record), even if they did not actually know it.

Consumer Price Index An index that tracks changes in the cost of goods and services for a typical consumer. Formerly called the cost of living index.

consummate To complete.

contiguous Adjacent, abutting, or in close proximity.

contingency clause A provision in a contract that makes the parties' rights and obligations depend on the occurrence (or nonoccurrence) of a particular event. Examples: inspection, appraisal and loan commitment.

contour The shape or configuration of a surface. A contour map depicts the topography of a piece of land by means of lines (contour lines) that connect points of equal elevation.

contract An agreement between two or more persons to do or not do a certain thing, for consideration.

contract, bilateral See: bilateral contract.

contract, executed See: executed contract.

contract, executory See: executory contract.

contract, express See: express contract.

contract, implied See: implied contract.

contract, oral See: oral contract.

contract, real estate See: real estate contract.

contract, sales See: purchase agreement.

contract, unenforceable See: unenforceable contract.

contract, unilateral See: unilateral contract.

contract, valid See: valid contract.

contract, void See: void contract.

contract, voidable See: voidable contract.

contract for deed A form of seller financing. A contract for the sale of real property in which the buyer (the vendee) pays in installments; the buyer takes possession of the property immediately, but the seller (the vendor) retains legal title until the full price has been paid. Also called a conditional sales contract, installment sales contract, or land contract. See also: seller financing.

contract of sale See: purchase agreement.

contractor One who contracts to perform labor or supply materials for a construction project, or to do other work for a specified price. A general contractor is in charge of a construction project, which she carries out with the assistance of subcontractors.

contribution, principle of See: principle of contribution.

conventional financing/mortgage An institutional loan that is not insured or guaranteed by a government agency. May require private mortgage insurance. Also called a conventional loan.

conversion Misappropriating property or funds belonging to another; for example, converting trust funds to one's own use.

conveyance The transfer of title to real property from one person to another by means of a written document, especially a deed.

cooperative A form of common interest ownership. A cooperative building is owned by a corporation, and the residents are shareholders in the corporation; each shareholder receives a proprietary lease on an individual unit and the right to use the common areas.

co-ownership Shared ownership of one piece of property by two or more individuals, each owning an undivided interest in the property with equal rights of possession (as in a tenancy in common or joint tenancy). Also called multiple ownership.

corporation An association organized according to certain laws, in which individuals may purchase ownership shares; treated by the law as an artificial person, separate from the individual stockholders.

correlation The final step in an appraisal, when the appraiser assembles and interprets the data in order to arrive at a final value estimate. See also: reconciliation.

cost The amount paid for anything in money, goods, or services.

cost approach to value One of the three main methods of appraisal, in which an estimate of the subject property's value is arrived at by estimating the cost of replacing (or reproducing) the improvements, then deducting the estimated accrued depreciation and adding the estimated market value of the land.

cost basis See: basis.

cost of living index See: Consumer Price Index.

counteroffer A response to a contract offer, changing some of the terms of the original offer; it operates as a rejection of the original offer (not as an acceptance). Also called qualified acceptance. The original offeror becomes the offeree and the original offeree is the new offeror.

covenant 1. A contract. 2. A promise. 3. A guarantee (express or implied) in a document such as a deed or a lease. 4. A restrictive covenant.

covenant, restrictive A promise to do or not do an act relating to real property, especially a promise that runs with the land; usually an owner's promise not to use property in a specified manner.

covenant against encumbrances In a deed, a promise that the property is not burdened by any encumbrances other than those that are disclosed in the deed. See also: general warranty deed.

covenant of further assurance In a deed, a promise that makes the grantor responsible for any further acts necessary to make sure title is clear. See also: general warranty deed.

covenant of quiet enjoyment A promise that a grantee's or a tenant's possession will not be disturbed by the previous owner, the lessor, or anyone else making a lawful claim against the property. See also: general warranty deed.

covenant of seisin In a deed, a promise that the grantor actually owns the interest being conveyed to the grantee and has the right to convey it. See also: general warranty deed.

CPM Certified Property Manager; a property manager who has satisfied the requirements set by the Institute of Real Estate Management of the National Association of REALTORS®.

credit A payment receivable (owed to someone), as opposed to a debit, which is a payment due (owed by someone). At closing, represents money that the party will not have to bring.

creditor One who is owed a debt.

creditor, secured A creditor with a security interest in or a lien against specific property; if the debt is not repaid, the secured creditor can repossess the property or (in the case of real estate) foreclose on the property and collect the debt from the sale proceeds.

criminal law The body of law under which the government can prosecute an individual for crimes, wrongs against society. Compare: civil law.

cul-de-sac A dead-end street, especially one with a semicircular turnaround at the end.

customer From the point of view of a seller's real estate agent, a prospective property buyer.

damage deposit Money a tenant gives a landlord at the beginning of the tenancy to protect the landlord in case the tenant fails to comply with the terms of the lease; the landlord may retain all or part of the deposit to cover unpaid rent or repair costs at the end of the tenancy. See also: security deposit.

damages In a civil lawsuit, a sum of money the defendant is ordered to pay the plaintiff.

damages, actual Damages awarded to a plaintiff based on losses actually incurred as a result of the defendant's acts.

damages, compensatory Damages awarded to a plaintiff as compensation for injuries (personal injuries, property damage, or financial losses) caused by the defendant's act or failure to act.

damages, liquidated See: liquidated damages.

damages, punitive In a civil lawsuit, an award added to compensatory damages, to punish the defendant for outrageous or malicious conduct and to discourage others from similar conduct.

datum An artificial horizontal plane of elevation, established in reference to sea level, used by surveyors as a reference point in determining elevation.

debit A charge or debt owed to another. At closing, represents money the party will have to bring.

debtor One who owes money to another.

debt service The amount of money required to make the periodic payments of principal and interest only on an amortized debt, such as a mortgage.

decedent A person who has died.

declaration of restrictions The document recorded (filed) with the county to establish a condominium community. The declaration includes the restrictive covenants as well as plat maps identifying each unit and all other elements of the condominium.

dedication A voluntary or involuntary gift of private property for public use; may transfer ownership or simply create an easement.

deduction An amount a taxpayer is allowed to subtract from income before the tax on the income is calculated (as distinguished from a tax credit, which is deducted from the tax owed). Property taxes and interest on property loans is generally deductible.

deed An instrument which, when properly executed and delivered, conveys title to real property from the grantor to the grantee.

deed, administrator's A deed used by the administrator of an estate to convey property owned by a deceased person to the heirs.

deed, correction A deed used to correct minor mistakes in an earlier deed, such as the misspelling of a name or an error in the legal description of the property. A quitclaim deed is often used for this purpose.

deed, general warranty A deed in which the grantor warrants the title against defects that might have arisen before or during the grantor's period of ownership.

deed, gift A deed that is not supported by valuable consideration; often lists "love and affection" as the consideration.

deed, grant A deed that uses the word "grant" in its words of conveyance and carries certain implied warranties.

deed, limited (special) warranty A deed in which the grantor warrants title only against defects that may have arisen during his or her period of ownership. Also called a special warranty deed.

deed, quitclaim See: quitclaim deed.

deed, sheriff's See: sheriff's deed.

deed, special warranty See: special (limited) warranty deed; deed, limited (special) warranty.

deed, tax A deed given to a purchaser of property at a tax foreclosure sale.

deed, trust See: deed of trust.

deed, trustee's A deed given to a purchaser of property at a trustee's sale, in the nonjudicial foreclosure of a deed of trust.

deed, warranty 1. A general warranty deed. 2. Any type of deed that carries warranties.

deed in lieu of foreclosure A deed given by a mortgage borrower to the lender to satisfy the debt and avoid foreclosure.

deed of reconveyance The instrument used to release the security property from the lien created by a deed of trust when the debt has been repaid.

deed of trust An instrument that creates a voluntary lien on real property to secure the repayment of a debt, and which includes a power of sale clause permitting nonjudicial foreclosure; the three parties are the grantor or trustor (borrower), the beneficiary (the lender), and the trustee (a neutral third party).

deed restrictions Provisions in a deed that restrict use of the property, and which may be either covenants or conditions (CC&Rs).

default Failure to fulfill an obligation, duty, or promise, as when a borrower fails to make payments, or a tenant fails to pay rent. May result in acceleration of a loan or eviction from leased property.

default judgment See: judgment, default.

defeasance clause A clause in a mortgage or lease that cancels or defeats a certain right upon the occurrence of a particular event. It typically defeats the lien right of the mortgagee when the note has been paid in full.

defeasible fee See: fee simple defeasible.

defendant 1. The person being sued in a civil lawsuit. 2. The accused person in a criminal lawsuit.

deferred maintenance Depreciation resulting from maintenance or repairs that were postponed, causing physical deterioration of the building.

deficiency judgment See: judgment, deficiency.

delivery The legal transfer of a deed from the grantor to the grantee, which results in the transfer of title. Acceptance by the grantee is an essential part of the delivery process.

demand Desire to own coupled with ability to afford; in appraisal, this is one of the four elements of value, along with scarcity, utility, and transferability.

demise The transfer of an estate or interest in property to another for years, for life, or at will.

density In land use law, the number of buildings or occupants per unit of land.

deposit Money offered as an indication of commitment or as a protection, and which may be refunded under certain circumstances; for example, a buyer's earnest money deposit or a tenant's security deposit.

deposit receipt See: purchase agreement.

depreciable property In the federal income tax code, property that is eligible for cost recovery deductions because it will wear out and have to be replaced.

depreciation 1. A loss in value (caused by deferred maintenance, functional obsolescence, or economic obsolescence). 2. For the purposes of income tax deductions, apportioning the cost of an asset over a period of time.

depreciation, accrued Depreciation that has built up or accumulated over a period of time.

depreciation, age-life A method of estimating depreciation for appraisal purposes, based on the life expectancy of the property, assuming normal maintenance.

depreciation, curable Deferred maintenance and functional obsolescence that would ordinarily be corrected by a prudent owner, because the correction cost could be recovered in the sales price.

depreciation, incurable Deferred maintenance, functional obsolescence, or economic obsolescence that is either impossible to correct, or not economically feasible to correct because the cost could not be recovered in the sales price.

depreciation, straight-line A method of calculating depreciation for income tax or appraisal purposes, in which an equal portion of a structure's value is deducted each year over the anticipated useful life; when the full value of the improvement has been depreciated, its economic life is exhausted.

depreciation deductions Under the federal income tax code, deductions from a taxpayer's income to permit the cost of an asset to be recovered; allowed only for depreciable property that is held for the production of income or used in a trade or business. Also called cost recovery deductions.

detached residence A home physically separated from the neighboring home(s), not connected by a common wall.

developed land Land with man-made improvements, such as buildings or roads.

developer One who subdivides or improves land to achieve its most profitable use.

development 1. Any development project, such as a new office park. 2. A housing subdivision. 3. In reference to a property's life cycle, the earliest stage, also called integration.

devise 1. (noun) A gift of real property through a will. 2. (verb) To transfer real property by will. Compare: bequest; bequeath; legacy.

devisee Someone who receives title to real property through a will. Compare: beneficiary; legatee.

devisor A testator who devises real property in a will.

disbursements Money paid out or expended.

disclaimer A denial of legal responsibility.

discount points A percentage of the principal amount of a loan, collected by the lender at the time a loan is originated, to give the lender an additional yield.

discount rate The interest rate charged when a member bank borrows money from the Federal Reserve Bank.

discrimination Treating people unequally because of their race, religion, sex, national origin, or some other fundamental characteristic.

domicile The state where a person has a permanent home.

donative intent The intent to transfer title immediately and unconditionally; required for proper delivery of a deed.

double-entry bookkeeping An accounting technique in which an item is entered in the ledger twice, once as a credit and once as a debit; used for some settlement statements.

down payment The part of the purchase price of property that the buyer is paying in cash; the difference between the purchase price and the financing.

downzoning Rezoning land for a more limited use.

drainage A system to draw water off land, either artificially (e.g., with pipes) or naturally (e.g., with a slope).

dual agency When an agent represents both parties to a transaction, as when a broker represents both the buyer and the seller with their written consent.

due-on-sale clause A provision in a security instrument (mortgage or deed of trust) that gives the lender the right to declare the entire loan balance due immediately if the borrower sells or otherwise transfers the security property. Also called an alienation clause.

duplex A structure that contains two separate housing units, with separate entrances, living areas, baths, and kitchens.

duress Unlawful force or constraint used to compel someone to do something (such as sign a contract) against his will.

dwelling A building or a part of a building used or intended to be used as living quarters.

earnest money A deposit that prospective buyers give sellers as evidence of their good faith intention to complete the transaction. Also called a good-faith deposit.

earnest money agreement See: purchase agreement.

easement An irrevocable right to use some part of another person's real property for a particular purpose.

easement, access An easement that enables the easement holders to reach and/or leave their property (the dominant tenement) by crossing the servient tenement. Also called an easement for ingress and egress.

easement, prescriptive See: prescriptive easement.

easement appurtenant An easement that benefits a piece of property, the dominant tenement. Compare: easement in gross.

easement by necessity 1. A special type of easement by implication, created by law even when there has been no prior use, if the dominant tenement would be entirely useless without an easement. 2. Any easement by implication.

easement by prescription See: easement, prescriptive.

easement in gross An easement that benefits a person or entity instead of a piece of land; there is a servient tenement, but no dominant tenement. Compare: easement appurtenant.

ECOA (Equal Credit Opportunity Act) A federal law prohibiting discrimination in the granting of consumer credit based on a set of protected classes. This law adds "age" to the protected groups in addition to the groups protected by fair housing laws.

economic life The period during which improved property will yield a return over and above the rent due to the land itself; also called the useful life. Compare: physical life.

economic obsolescence See: obsolescence, economic.

economic survey A part of the land use planning process, in which the present and anticipated future economic needs of an area are analyzed.

effective age The age of a structure indicated by its condition and remaining usefulness (as opposed to its actual age). Good maintenance may increase a building's effective age, and poor maintenance may decrease it; for example, a 50-year-old home that has been well maintained might have an effective age of 15 years, meaning that its remaining usefulness is equivalent to that of a 15-year-old home.

effective gross income See: income, effective gross.

egress A means of exiting, a way to leave a property; the opposite of ingress. The terms *ingress* and *egress* are most commonly used in reference to an access easement.

EIS See: environmental impact statement (EIS).

elements of comparison In the market data approach to value, considerations taken into account in selecting comparables and comparing comparables to the subject property; they include time of sale, location, and physical characteristics.

emblems Crops that are produced annually through the labor of the cultivator, such as wheat.

emblems, doctrine of The legal rule that gives an agricultural tenant the right to enter the land to harvest crops after the lease ends.

eminent domain The government's constitutional power to take (condemn) private property for public use, as long as the owner is paid just compensation.

employee Someone who works under the direction and control of another. Compare: independent contractor.

encroachment A physical intrusion onto neighboring property, usually due to a mistake regarding the location of the boundary.

encumber To place a lien or other encumbrance against the title to a property.

encumbrance A nonpossessory interest in real property; a right or interest held by someone other than the property owner, which may be a lien, an easement, or a restrictive covenant.

endorsement Assignment of a negotiable instrument (such as a check or a promissory note) by the payee to another party, by signing on the back of the instrument.

enjoin To prohibit an act, or command performance of an act, by court order; to issue an injunction.

environmental impact statement (EIS) A report that contains detailed information concerning how a proposed project would affect the environment in the future.

EPA Environmental Protection Agency.

equitable interest or title See: title, equitable.

equitable redemption See: redemption, equitable right of.

equity 1. An owner's unencumbered interest in her property; the difference between the value of the property and the liens against it. 2. A judge's power to soften or set aside strict legal rules, to bring about a fair and just result in a particular case.

erosion Gradual loss of soil due to the action of water or wind.

escalator clause A clause in a contract or mortgage that provides for payment or interest adjustments (usually increases) if specified events occur, such as a change in the property taxes or in the prime interest rate. Also called an escalation clause.

escape clause A provision in a purchase agreement that allows the buyer to terminate the contract if the appraised value of the property turns out to be significantly less than the agreed price. Required for transactions to be financed with FHA or VA loans, if the loan applicant (the buyer) signs the purchase agreement before the appraisal report is issued.

escheat Reversion of property to the state after a person dies intestate and no heirs can be located.

escrow An arrangement in which something of value (such as money or a deed) is held on behalf of the parties to a transaction by a disinterested third party (an escrow agent) until specified conditions have been fulfilled.

escrow account A bank account maintained by a lender for payment of property taxes and insurance premiums on the security property; the lender requires the borrower to make regular deposits, and pays the expenses out of the account. Also called a reserve account or impound account.

estate 1. An interest in real property that is or may become possessory; either a freehold or a leasehold. 2. The property left by someone who has died.

estate, fee simple See: fee simple absolute.

estate, periodic See: estate from period to period.

estate at sufferance A situation in which a tenant who originally took possession of the property lawfully stays on after the lease ends without the landlord's consent; the lowest estate in land. Also called a tenancy at sufferance.

estate at will A leasehold estate for an indefinite period, which continues until either the landlord or the tenant gives notice of termination to the other party.

estate in remainder See: remainder.

estate in reversion See: reversion.

estate for life A freehold estate that lasts only as long as a specified person lives; that person is referred to as the measuring life. Commonly called a life estate.

estate for years An estate for a definite period of time, which terminates automatically at the end of the period. Also called a tenancy for years or a term tenancy.

estate from period to period (periodic tenancy) A leasehold that by its terms renews automatically for identical periods on the same terms until one party gives notice. There is no set termination date. Month-to-month or quarter-to-quarter leases would be examples.

estate of inheritance An estate that can pass to the holder's heirs, such as a fee simple.

estoppel A legal doctrine that prevents a person from asserting rights or facts that are inconsistent with his earlier actions or statements.

estoppel certificate A document that prevents the person who signs it from later asserting facts different from those stated in the document—for example, a statement signed by a mortgage lender confirming that the remaining mortgage balance is a specified amount. Also called an estoppel letter.

ethics A system of accepted principles or standards of moral conduct. See also: code of ethics.

eviction Dispossession or expulsion of a person from real property. See also: unlawful detainer.

eviction, actual Physically forcing someone off of real property (or preventing them from re-entering), or using the legal process to make them leave. Compare: eviction, constructive.

eviction, constructive See: constructive eviction.

eviction, self-help The use of physical force, a lock-out, or a utility shut-off to evict a tenant, instead of the legal process. This is generally illegal.

exception, title insurance A condition of the title to a property that the title insurance company will not cover. An existing encumbrance or limitation identified by the title insurer and for which the company provides no insurance protection.

exchange See: tax-free exchange.

exclusive listing See: listing, exclusive.

exclusive right-to-sell listing See: listing, exclusive right-to-sell.

exculpatory clause A clause in a contract that relieves one party of liability for certain injuries or problems; such a provision is not always enforceable.

execute 1. To sign an instrument and take any other steps (such as acknowledgment) that may be necessary to its validity. 2. To perform or complete. See also: contract, executed.

executed contract A contract in which both parties have completely performed their contractual obligations.

execution The legal process in which a court orders an official (such as the sheriff) to seize and sell the property of a judgment debtor to satisfy a lien.

executor A person named in a will to carry out its provisions.

executory contract A contract in which one or both parties have not yet completed performance of their obligations.

exemption A provision holding that a law or rule does not apply to a particular person or group; for example, a person entitled to a tax exemption is not required to pay the tax.

expenses, fixed Recurring property expenses, such as general real estate taxes and hazard insurance.

expenses, maintenance Cleaning, supplies, utilities, tenant services, and administrative costs for income-producing property.

expenses, operating For income-producing property, the fixed expenses, maintenance expenses, and reserves for replacement; does not include debt service.

expenses, variable Expenses incurred in connection with property that do not occur on a set schedule, such as the cost of repairing a roof damaged in a storm.

express Stated in words, whether spoken or written. Compare: implied.

extender clause See: override clause.

external obsolescence See: obsolescence, economic.

failure of purpose When the intended purpose of an agreement or arrangement can no longer be achieved; in most cases, this releases the parties from their obligations.

Fannie Mae Popular name for the Federal National Mortgage Association (FNMA).

feasibility study A cost-benefit analysis of a proposed project, often required by lenders before giving a loan commitment.

Fed The Federal Reserve.

federal Fair Housing Act The 1968 law that makes discrimination based on race, color, sex, religion, or national origin illegal in connection with the sale or rental of most housing. Handicap and familial status were added as protected classes in 1988.

Federal Home Loan Mortgage Corporation (FHLMC) A government-sponsored secondary market agency, popularly known as Freddie Mac.

Federal Housing Administration (FHA) A federal agency within the Department of Housing and Urban Development (HUD) that provides mortgage insurance to encourage lenders to make loans to low- and middle-income homebuyers. See also: loan, FHA.

Federal Land Bank One of 12 institutions that make mortgage loans to qualified borrowers for the purchase of farms, other agricultural lands, livestock, farm machinery, etc.

Federal National Mortgage Association (FNMA) A government-sponsored secondary market agency, popularly known as Fannie Mae.

Federal Trade Commission (FTC) A federal agency responsible for investigating and eliminating unfair and deceptive business practices, which is responsible for enforcement of the Truth in Lending Act.

fee, qualified See: fee simple defeasible.

fee simple See: fee simple absolute.

fee simple absolute The highest and most complete form of ownership (freehold estate), which is of potentially infinite duration. Also called a fee estate or a fee simple.

fee simple defeasible A fee simple estate often given as a gift, that is subject to termination if a certain condition is not met or if a specified event occurs. Also called a conditional fee, determinable fee, or qualified fee.

FHA Federal Housing Administration. See also: loan, FHA.

FHLMC See: Federal Home Loan Mortgage Corporation.

fiduciary relationship A relationship of trust and confidence, in which one party owes the other (or both parties owe each other) loyalty and a higher standard of good faith than is owed to third parties. For example, an agent is a fiduciary in relation to the principal; husband and wife are fiduciaries in relation to one another.

finance charge Any charge a borrower is assessed, directly or indirectly, in connection with a loan. See also: total finance charge.

financial statement A summary of facts showing the financial condition of an individual or a business, including a detailed list of assets and liabilities. Also called a balance sheet.

financing statement A brief instrument that is recorded to perfect and give constructive notice of a creditor's security interest in an article of personal property. The modern version of a chattel mortgage.

finder's fee A referral fee paid to someone for directing a client or customer to a real estate agent, or for directing a loan applicant to a lender.

first lien position The position held by a mortgage that has higher lien priority than any other mortgage against the property. Priority is determined by the date and time of recording in the public record.

fiscal year Any 12-month period used as a business year for accounting, tax, and other financial purposes, as opposed to a calendar year.

fixed disbursement plan A construction financing arrangement that calls for the loan proceeds to be disbursed in a series of predetermined installments when various stages of the construction are completed.

fixed-rate loan See: loan, fixed-rate.

fixed term A period of time that has a definite beginning and ending.

fixture An item that used to be personal property but has been attached to or closely associated with real property in such a way that it has legally become part of the real property. See: annexation, actual.

FNMA See: Federal National Mortgage Association.

forbearance An agreement in which one of the parties agrees to not do something.

foreclosure Sale of property initiated by a lien holder, against the owner's wishes, so that the unpaid lien can be satisfied from the sale proceeds.

foreclosure, judicial 1. The sale of property pursuant to court order to satisfy a lien. 2. A lawsuit filed by a mortgagee to foreclose on the security property when the mortgagor has defaulted. Also called foreclosure by action.

foreclosure, nonjudicial The right given the public trustee to foreclose for the beneficiary of a deed of trust. See: equitable redemption and statutory redemption

foreclosure, strict When a court orders title to mortgaged property to be transferred directly from the defaulting mortgagor to the mortgagee, without a public auction.

foreclosure by action See: foreclosure, judicial.

forfeiture Loss of a right or something else of value as a result of failure to perform an obligation or condition.

franchise A right or privilege granted by a government to conduct a certain business, or a right granted by a private business to use its trade name in conducting business.

fraud An intentional or negligent misrepresentation or concealment of a material fact, which is relied upon by another, who is induced to enter into a transaction and harmed as a result.

fraud, actual Intentional deceit or misrepresentation to cheat or defraud another.

fraud, constructive A breach of duty that misleads the person the duty was owed to, without an intention to deceive.

Freddie Mac Popular name for the Federal Home Loan Mortgage Corporation (FHLMC).

free and clear Ownership of real property completely free of liens.

freehold A possessory interest in real property that has an indeterminable duration; it can be either a fee simple or an estate for life. Someone who has a freehold estate has title to the property (as opposed to someone who has a leasehold estate, who is only a tenant).

frontage The distance a property extends along a street or a body of water; the distance between the two side boundaries at the front of the lot.

front foot A measurement of property for sale or valuation, with each foot of frontage presumed to extend the entire depth of the lot.

front money The cash required to get a project or venture underway; includes initial expenses such as attorney's fees, feasibility studies, loan charges, and a down payment.

fully amortized loan A loan with equal consecutive payments calculated to pay the accrued loan interest and pay principal with each payment so that at the end of the term the loan is fully paid.

functional obsolescence Loss in value due to inadequate or outmoded equipment, or as a result of a poor or outmoded design. Items inside the property boundary.

funding fee A fee charged in connection with a VA-guaranteed loan. The borrower is required to pay the fee to the Department of Veterans Affairs; it may be financed along with the loan amount.

gain Under the federal income tax code, that portion of the proceeds from the sale of a capital asset, such as real estate, that is recognized as taxable profit.

garnishment A legal process by which a creditor gains access to the funds or personal property of a debtor that are in the hands of a third party. For example, if the debtor's wages are garnished, the employer is required to turn over part of each paycheck to the creditor.

general agent An agent authorized to handle all of the principal's affairs in one area or in specified areas. Has a limited power to bind the principal.

general lien A lien against all the assets of a debtor and not specific to any one asset. Judgment liens and income tax liens are general liens.

general warranty deed A grant deed containing the five implied covenants and warranties: covenant of seisin, covenant of quiet enjoyment, covenant against encumbrances, covenant of further assurance, and warranty forever.

gift funds Money that a relative (or other third party) gives to a buyer who otherwise would not have enough cash to close the transaction.

Ginnie Mae Popular name for the Government National Mortgage Association (GNMA).

GNMA See: Ginnie Mae

goodwill An intangible asset of a business resulting from a good reputation with the public, which serves as an indication of future return business.

government lien A lien for property taxes. May be ad valorem taxes or special assessment taxes.

government survey system See: rectangular survey system.

graduated lease A lease in which it is agreed that the rental payments will increase at certain intervals by a specified amount or according to a specified formula. Two types of graduated leases are a step-up lease or index lease.

graduated payment mortgage (GPM) A loan that provides for lower payments in the first years of its term; the payments increase in steps, then level off, typically after three to seven years.

grant To transfer or convey an interest in real property by means of a written instrument.

grantee One who receives a grant of real property.

granting clause Words in a deed that indicate the grantor's intent to transfer an interest in property. Also called the words of conveyance.

grantor One who grants an interest in real property to another.

gross income multiplier method A method of appraising residential property by reference to its rental value. Also called the gross rent multiplier method.

gross lease A lease in which the rent is set at a fixed amount, and the landlord pays most or all the property's operating expenses. Also called a fixed lease, flat lease, or straight lease.

gross rent multiplier A figure that is multiplied by a rental property's gross income to arrive at an estimate of the property's value.

guardian A person appointed by a court to administer the affairs of a minor or an incompetent person, who is referred to as the guardian's ward.

habendum clause A clause included after the granting clause in many deeds; it begins "to have and to hold" and describes the type of estate the grantee will hold.

habitability, implied warranty of See: implied warranty of habitability.

heir Someone entitled to inherit another's property under the laws of intestate succession.

heirs and assigns A phrase used in legal documents to cover all successors to a person's interest in property; assigns are successors who acquire title in some manner other than inheritance, such as by deed.

highest and best use The use which, at the time of appraisal, is most likely to produce the greatest net return from the property over a given period of time.

HOA Abbreviation for homeowners association.

holdover clause A provision in a listing agreement or buyer representation agreement stating that, for a stated period of time, the broker will be entitled to a commission for a sale to a party introduced to the property by the broker. Listing exclusively with a different broker usually terminates holdover rights.

homeowners association A nonprofit association made up of homeowners in a subdivision, responsible for enforcing the CC&Rs and managing other community affairs.

homestead Real estate that is occupied and used as the principal residence of the owner and the owner's family.

homestead law A state law that provides limited protection against creditors' claims for homestead property.

Housing and Urban Development, Department of (HUD) A cabinet-level federal agency that includes the FHA and Ginnie Mae.

HUD See: Housing and Urban Development, Department of (HUD).

hypothesize To make property security for an obligation without giving up possession of it (as opposed to pledging, which involves surrender of possession).

implied Not expressed in words, but conveyed through actions or circumstances. Compare: express.

implied warranty of habitability A warranty in a every residential lease that the property is fit for habitation.

impound account See: escrow account.

improvement A man-made addition to real property such as a house or landscaping.

improvements, misplaced Improvements that do not fit the most profitable use of the site; they can be either overimprovements or underimprovements.

imputed knowledge Knowledge presumed by law to exist. A principal is presumed to know information communicated to the principal regarding the subject of the agency. Subagents of a primary agent will have imputed knowledge of a primary agent and will be presumed to know what the primary agent knows.

in equity (ownership in equity) The holder of equitable title is the "owner in equity."

income, disposable Income remaining after income taxes have been paid.

income, effective gross A measure of a rental property's capacity to generate income; calculated by subtracting a bad debt/vacancy factor from the economic rent (potential gross income).

income, gross See: income, potential gross.

income, net operating See: net operating income.

income, potential gross A property's economic rent; the total income it could earn if it were available for lease in the current market, before making any deductions (for bad debts, vacancies, operating expenses, etc.).

income, residual The amount of income that an applicant for a VA loan has left over after taxes, recurring obligations, and the proposed housing expense have been deducted from gross monthly income.

income, spendable The income that remains after deducting operating expenses, debt service, and income taxes from a property's gross income. Also called net spendable income or cash flow.

income approach to value One of the three main methods of determining value, in which an estimate of the subject property's value is based on the net income it produces; also called the capitalization method or investor's method of appraisal.

income property Property that generates rent or other income for the owner, such as an apartment building. In the federal income tax code, it is referred to as property held for the production of income.

income ratio A standard used in qualifying buyers for loans, to determine whether they have sufficient income; buyers' debts and proposed housing expenses should not exceed a specified percentage of their income.

incompetent Not legally competent; not of sound mind.

increasing and decreasing returns, principle of An appraisal principle holding that a point is reached where additional investments (in the form of labor or capital) in a piece of property will not be justified by the resulting increase in net income. Also called the principle of contribution.

independent contractor A person who contracts to do a job for another, but retains control over how the task will be carried out, rather than following detailed instructions. Compare: employee.

index A published statistical report that indicates changes in the cost of money; used as the basis for interest rate adjustments in an ARM.

index lease A type of graduated lease in which the periodic rent increases are tied to increases in the consumer price index, or some other economic indicator.

indexes, grantor/grantee Indexes of recorded documents maintained by the recorder, with each document listed in alphabetical order according to the last name of the grantor (in the grantor index) and grantee (in the grantee index); the indexes list each document's recording number, so that the document can be located in the public record.

ingress A means of entering a property; the opposite of egress. The terms *ingress* and *egress* are most commonly used in reference to an access easement.

injunction A court order prohibiting someone from performing an act, or commanding performance of an act.

installment sale Under the federal income tax code, a sale in which less than 100% of the sale price is received in the year the sale takes place.

installment land contract A specific type of seller financing in which the seller will receive installment payments from the buyer and promises to deliver a deed at the conclusion of the contract period. The seller retains legal title, and the buyer has possession and equitable title.

instrument A legal document, usually one that transfers title (such as a deed), creates a lien (such as a mortgage), or establishes a right to payment (such as a promissory note or contract).

insurance, hazard Insurance against damage to real property caused by fire, flood, theft, or other mishap. Also called casualty insurance.

insurance, homeowners Insurance against damage to the real property and the homeowner's personal property.

insurance, mortgage Insurance that protects a lender against losses resulting from the borrower's default. Also called mortgage default insurance.

insurance, private mortgage (PMI) Insurance provided by private companies to conventional lenders for loans with loan-to-value ratios over 80 percent.

insurance, title See: title insurance.

insurance, title, extended coverage Title insurance that covers problems that should be discovered by an inspection of the property (such as encroachments and adverse possession), in addition to the problems covered by standard coverage policies.

insurance, title, standard coverage Title insurance that protects against latent title defects (such as forged deeds) and undiscovered recorded encumbrances, but does not protect against problems that would only be discovered by an inspection of the property.

interest 1. A right or share in something (such as a piece of real estate). 2. A charge a borrower pays to a lender for the use of the lender's money.

interest, compound Interest computed on both the principal and the interest that has accrued on the principal. Compare: interest, simple

interest, future An interest in property that will or may become possessory at some point in the future, such as a remainder or reversion.

interest, interim See: interest, prepaid.

interest, prepaid Interest on a new loan that must be paid at the time of closing; covers the interest due for the first month of the loan term. Also called interim interest.

interest, simple Interest that is computed on the principal amount of the loan only (which is the type of interest charged in connection with real estate loans). Compare: interest, compound.

interest, undivided A co-owner's interest, giving her the right to possession of the whole property, rather than to a particular section of it.

interpleader A court action filed by someone who is holding funds that two or more people are claiming. The holder turns the funds over to the court, which resolves the dispute and delivers the money to the party entitled to it.

intestate Without a valid will.

intestate succession Distribution of the property of a person who died intestate to the heirs.

invalid Not legally binding or legally effective; not valid.

inventory A detailed list of the stock-in-trade of a business.

inverse condemnation A court action by a private landowner against the government, seeking compensation for damage to property as a result of government action.

inverted pyramid A way of visualizing ownership of real property; in theory, a property owner owns all the earth, water, and air enclosed by a pyramid that has its tip at the center of the earth and extends up through the property boundaries out into the sky.

investment property Property held as an investment in the expectation that it will appreciate in value.

joint tenancy Concurrent ownership in which each owner has a right of survivorship interest in the estates of the others. The parties hold equal interests.

joint venture Two or more individuals or companies joining together for one project or a related series of projects, but not as an ongoing business. Compare: partnership.

judgment 1. A court's binding determination of the rights and duties of the parties in a lawsuit. 2. A court order requiring one party to pay the other damages.

judgment, default A court judgment in favor of the plaintiff due to the defendant's failure to answer the complaint or appear at a hearing.

judgment, deficiency A personal judgment entered against a borrower in favor of the lender if the proceeds from a foreclosure sale of the security property are not enough to pay off the debt.

judgment creditor A person who is owed money as a result of a judgment in a lawsuit.

judgment debtor A person who owes money as a result of a judgment in a lawsuit.

judgment lien A general lien against a judgment debtor's property, which enables the judgment creditor to force the sale of the property and collect the judgment from the proceeds if the judgment debtor does not pay.

judicial foreclosure 1. The sale of property pursuant to court order to satisfy a lien. 2. A lawsuit filed by a mortgagee to foreclose on the security property when the mortgagor has defaulted. Also called foreclosure by action.

just compensation The compensation that the U.S. Constitution requires the government to pay a property owner when the property is taken under the power of eminent domain.

laches, doctrine of A legal principle holding that the law will refuse to protect those who fail to assert their legal rights within the time period prescribed by the statute of limitations, or (if there is no applicable statute of limitations) within a reasonable time. Based on the doctrine of laches, a contract that was valid may be unenforceable after a period of time.

land In the legal sense, it is the solid part of the surface of the earth, everything affixed to it by nature or by man, and anything on it or in it, such as minerals and water; real property.

land contract See: contract for deed.

land lease (ground lease) A lease of the land only, usually for a long term, to a tenant who intends to construct a building on the property. Also called a ground lease.

landlocked property A parcel of land without access to a road or highway.

landlord A landowner who has leased his property to another. Also called a lessor.

landmark A monument, natural or artificial, set up on the boundary between two adjacent properties, to show the boundary.

latent defects Defects that are not visible or apparent (as opposed to patent defects).

lawful objective An objective or purpose of a contract that does not violate the law or a judicial determination of public policy.

lease A transfer of a leasehold estate from the fee owner (the landlord or lessor) to a tenant (or lessee); a contract in which one party pays the other rent in exchange for the possession (and profits) of real estate. Sometimes called a rental agreement.

lease, escalator A lease in which the tenant pays a fixed rent based on the landlord's estimate of annual operating expenses, with any excess expenses charged to the tenant at the end of the year.

lease, fixed See: gross lease.

lease, graduated See: graduated lease.

lease, gross See: gross lease.

lease, ground See: land lease.

lease, index See: index lease.

lease, land See: land lease.

lease, net See: net lease.

lease, percentage See: percentage lease.

lease, sandwich A leasehold interest lying between the property owner's interest and the interest of the tenant in possession; for example, when a tenant subleases the property to a subtenant, the original tenant's interest is sandwiched between the interest of the landlord and that of the subtenant.

lease, step-up A type of graduated lease in which the rent increases are part of the lease document.

leaseback See: sale-leaseback.

leasehold A possessory interest in real property that has a limited duration. Also called a less-than-freehold estate.

legacy A gift of personal property by will. Also called a bequest.

legal description A precise description of a parcel of real property; the three main types of legal descriptions are metes and bounds, rectangular survey, and recorded plat.

legatee Someone who receives personal property (a legacy) under a will.

lender, institutional A bank, savings and loan, or similar financial institution that invests other people's funds in loans; as opposed to an individual or private lender, which invests its own funds.

lessee One who leases property from another; a tenant.

lessor One who leases property to another; a landlord.

less-than-freehold See: leasehold.

leverage The effective use of borrowed money to finance an investment such as real estate.

levy To impose a tax.

liability 1. A debt or obligation. 2. Legal responsibility.

liability, joint and several A form of liability in which two or more persons are responsible for a debt both individually and as a group.

liability, limited See: limited liability.

liable Legally responsible.

license 1. Official permission to do a particular thing that the law does not allow everyone to do. 2. Revocable, nonassignable permission to use another person's land for a particular purpose. Compare: easement.

lien A nonpossessory interest in real property, giving the lienholder the right to foreclose if the owner doesn't pay a debt owed to the lienholder; a financial encumbrance on the owner's title.

lien, attachment A lien intended to prevent transfer of the property pending the outcome of litigation.

lien, equitable A lien arising as a matter of fairness, rather than by agreement or by operation of law.

lien, general A lien against all the property of a debtor, rather than a particular piece of her property. Compare: lien, specific.

lien, involuntary A lien that arises by operation of law, without the consent of the property owner. Also called a statutory lien. A local improvement special assessment is an involuntary lien.

lien, judgment A general lien against a judgment debtor's property, which enables the judgment creditor to force the sale of the property and collect the judgment from the proceeds if the judgment debtor does not pay.

lien, materialman's A construction lien in favor of someone who supplied materials for a project (as opposed to labor).

lien, mechanic's See: mechanic's lien.

lien, mortgage See: mortgage lien.

lien, property tax See: property tax lien.

lien, specific See: specific lien.

lien, statutory See: lien, involuntary.

lien, tax A lien on property to secure the payment of taxes.

lien, voluntary A lien placed against property with the consent of the owner; a mortgage.

lienholder, junior A secured creditor whose lien is lower in priority than another's lien. Priority is based on the date of recording.

lien notice A written notice from a contractor or subcontractor informing a property owner that a lien could be enforced against the property if bills for construction labor or materials are not paid.

lien priority The order in which liens are paid off out of the proceeds of a foreclosure sale. Determined by the date and time of recording for most liens.

lien theory The theory holding that a mortgage does not involve a transfer of title to the lender, but merely creates a lien against the property in the lender's favor. Compare: title theory.

life estate A freehold estate created by deed that lasts only as long as a specified person lives. That person is referred to as the measuring life. Also called an estate for life.

life tenant Someone who owns a life estate; the person entitled to possession of the property during the measuring life.

like-kind exchange See: tax-free exchange.

limited common element Common elements that are reserved for the use of a certain unit or certain units, to the exclusion of other units; examples include assigned parking spaces and storage lockers.

limited liability A situation in which a business investor is not personally liable for all the debts of the business, as in the case of a limited partner or a corporate stockholder.

limited liability company (LLC) A form of business organization that combines certain characteristics of corporations and partnerships; the managing members are not personally liable for the company's obligations.

limited partnership See: partnership, limited.

limited (special) warranty deed A grant deed in which the warranties of title are limited to the grantor's ownership period.

lineal Relating to a line; having only length, without depth. A lineal mile is 5,280 feet in distance.

liquid (liquid asset) An asset that can be quickly sold on an open market. Real estate is not normally considered a liquid asset.

liquidated damages A sum that the parties to a contract agree in advance (at the time the contract is made) will serve as full compensation in the event of a breach.

lis pendens A recorded notice stating that there is a lawsuit pending that may affect title to the defendant's real estate.

listing A written agency contract between a seller and a real estate broker providing that the broker will be paid a commission for finding (or attempting to find) a buyer for the seller's property. Also called a listing agreement.

listing, exclusive Either an exclusive agency listing or an exclusive right-to-sell listing.

listing, exclusive agency A listing agreement that entitles the broker to a commission if anyone other than the seller finds a buyer for the property during the listing term. The seller reserves the right to arrange a sale without the broker's help and not be obligated to pay a commission.

listing, exclusive right-to-sell A listing agreement that entitles the broker to a commission if anyone—including the seller—finds a buyer for the property during the listing term.

listing, net See: net listing.

listing, open See: open listing.

littoral land Land that borders on a stationary body of water (such as a lake, as opposed to a river or stream). Compare: riparian land.

littoral rights The water rights of an owner of littoral land, in regard to use of the water in the lake.

LLC Limited liability company.

loan See: entries under mortgage.

loan, amortized A loan that requires regular installment payments of both principal and interest (as opposed to interest-only payments). It is fully amortized if the installment payments will pay off the full amount of the principal and all of the interest by the end of the repayment period. It is partially amortized if the installment payments will cover only part of the principal, so that a balloon payment of the remaining principal balance is required at the end of the repayment period.

loan, conforming See: conforming loan.

loan, conventional An institutional loan that is not insured or guaranteed by a government agency. May require private mortgage insurance.

Loan Estimate New form mandated by the TILA-RESPA rule that helps consumers to understand the key features, costs, and risks of a mortgage loan. It must be provided to consumers no later than three business days after they submit a loan application.

loan, FHA A loan made by an institutional lender and insured by the Federal Housing Administration, so that the FHA will reimburse the lender for losses that result if the borrower defaults.

loan, fixed-rate A loan on which the interest rate will remain the same throughout the entire loan term. Compare: mortgage, adjustable-rate.

loan, G.I. See: loan, VA-guaranteed.

loan, guaranteed A loan in which a third party has agreed to reimburse the lender for losses that result if the borrower defaults.

loan, interest-only A loan that requires the borrower to pay only the interest during the loan term, so that the entire amount borrowed (the principal) is due at the end of the term.

loan, interim Construction mortgage.

loan, permanent See: loan, take-out.

loan, seasoned A loan with an established record of timely payment by the borrower.

loan, take-out Long-term financing used to replace a construction loan (an interim loan) when construction has been completed. Also called a permanent loan.

loan, VA-guaranteed See: VA-guaranteed loan.

loan broker A person or company who negotiates loans between borrowers and lenders.

loan correspondent An intermediary who arranges loans of an investor's money to borrowers, and then services the loans.

loan origination fee The administrative fee often charged for setting up a new loan. Sometimes called a loan service fee.

loan-to-value ratio (LTV) The relationship between the loan amount and either the sales price or the appraised value of the property (whichever is less), expressed as a percentage.

lock-in clause A clause in a promissory note or contract for deed that prohibits prepayment before a specified date, or prohibits it altogether.

lot A parcel of land; especially, a parcel in a subdivision.

lot and block description The type of legal description used for platted property; it states the property's lot number and block number and the name of the subdivision, referring to the plat map recorded in the county where the property is located. Sometimes called a maps and plats or lot, block, and subdivision description.

love and affection The consideration often listed on a deed when real estate is conveyed between family members with no money exchanged. The law recognizes love and affection as good consideration (as distinguished from valuable consideration, which is money, goods, or services).

LTV Loan-to-value ratio.

MAI Member of the Appraiser's Institute. The initials identify a member of the American Institute of Real Estate Appraisers of the National Association of REALTORS®.

majority, age of The age at which a person becomes legally competent; generally, 18 years old. Compare: minor.

maker The person who signs a promissory note, promising to repay a debt. Compare: payee.

management agreement The agreement between a property manager and the owner of the property specifying the duties and authority of the property manager and the method of payment for the services.

manufactured home A structure that is transportable, is not affixed to real estate, is built on a permanent chassis, and is designed to be used as a dwelling with or without a permanent foundation. Also applies to housing manufactured in components which are shipped to a site and assembled as units.

maps and plats See: lot and block description.

margin In an adjustable-rate mortgage, the difference between the index rate and the interest rate charged to the borrower.

marginal land Land that is of little economic value and barely repays the cost of working it.

marketable title Title free and clear of objectionable liens, encumbrances, or defects, so that a reasonably prudent person with full knowledge of the facts would not hesitate to purchase the property.

market data approach One of the three main methods of appraisal, in which the sales prices of comparable properties are used to estimate the value of the subject property. Also called the sales comparison approach.

market price 1. The current price generally being charged for something in the marketplace. 2. The price actually paid for a property. Compare: market value.

market value The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (This is the definition from the *Uniform Standards of Professional Appraisal Practice*.) Sometimes called value in exchange or objective value. Compare: market price.

master development plan A comprehensive, long-term plan of development for a community, which is implemented by zoning and other laws. Also called a comprehensive plan or a general plan.

material fact An important fact; one that is likely to influence a decision. Must be disclosed as soon as it is discovered to all parties to an agreement.

maturity date The date by which a loan is supposed to be paid off in full.

measuring life See: life estate.

mechanic's lien A lien filed by a party who provided labor or materials to improve the property of another. This lien usually takes its priority from the date the labor began or the date materials were delivered.

meeting of minds See: mutual agreement.

megropolis An extensive, heavily populated, continuously urban area, including any number of cities.

merger 1. Uniting two or more separate properties by transferring ownership of all of them to one person. 2. Acquisition by the owner of one parcel of title to one or more adjacent parcels.

meridian, principal See: principal meridian.

metes Measurements.

metes-and-bounds description A legal description that starts at an identifiable point of beginning, then describes the property's boundaries in terms of courses (compass directions) and distances, ultimately returning to the point of beginning.

mill One-tenth of one cent; a measure used to state property tax rates in some cases. For example, a tax rate of one mill on the dollar is the same as a rate of one-tenth of 1% of the assessed value of the property.

mineral rights Rights to the minerals located beneath the surface of a piece of property.

minimum property requirements (MPRs) A lender's requirements concerning the physical condition of a building, which must be met before a loan can be approved.

minor A person who has not yet reached the age of majority; generally, a person under 18.

MIP Mortgage insurance premium; especially a premium charged in connection with an FHA-insured loan.

misrepresentation A false or misleading statement. See also: fraud.

MLS Multiple listing service.

monument A visible marker (natural or artificial) used in a survey or a metes-and-bounds description to establish the boundaries of a piece of property.

mortgage An instrument that creates a voluntary lien on real property to secure repayment of a debt; the two parties are the mortgagor (borrower) and mortgagee (lender).

Note: If you do not find the specific term you are looking for, check the entries under "loan."

mortgage, adjustable-rate (ARM) See: adjustable-rate mortgage (ARM).

mortgage, balloon A partially amortized mortgage loan that requires a large balloon payment at the end of the loan term.

mortgage, blanket See: blanket mortgage.

mortgage, budget See: budget mortgage.

mortgage, construction See: construction mortgage.

mortgage, first See: first mortgage.

mortgage, graduated payment (GPM) See: graduated payment mortgage (GPM).

mortgage, hard money A mortgage given to a lender in exchange for cash, as opposed to one given in exchange for credit.

mortgage, junior A mortgage that has lower lien priority than another mortgage against the same property. Sometimes called a secondary mortgage.

mortgage, open-end A loan that permits borrowers to reborrow the money they have repaid on the principal, usually up to the original loan amount, without executing a new loan agreement.

mortgage, package A mortgage used in home financing that is secured by certain items of personal property (such as appliances or carpeting) in addition to the real property.

mortgage, purchase money See: purchase money mortgage.

mortgage, satisfaction of See: satisfaction of mortgage.

mortgage, secondary See: mortgage, junior.

mortgage, senior A mortgage that has higher lien priority than another mortgage against the same property; the opposite of junior mortgage.

mortgage, wraparound A purchase money loan arrangement in which the seller uses part of the buyer's payments to make the payments on an existing loan (called the underlying loan); the buyer takes title subject to the underlying loan but does not assume it.

mortgage banker An intermediary who originates and services real estate loans on behalf of investors.

mortgage broker An intermediary who brings real estate lenders and borrowers together and negotiates loan agreements between them.

mortgage company A type of real estate lender that originates and services loans on behalf of large investors (acting as a mortgage banker) or for resale on the secondary mortgage market.

mortgagee A lender who accepts a mortgage as security for repayment of the loan.

mortgagee's policy A policy of title insurance protecting the lender from title defects that could make the loan collateral less valuable.

mortgage lien The lien created by a mortgage.

mortgage loan A loan secured by a mortgage against specified real property.

mortgagor A property owner (usually a borrower) who gives a mortgage to another (usually a lender) as security for payment of an obligation.

multiple listing service (MLS) An organization of brokers who share their exclusive listings.

mutual agreement When all parties freely agree to the terms of a contract, without fraud, undue influence, duress, menace, or mistake. Mutual consent is achieved through offer and acceptance; it is sometimes referred to as a "meeting of the minds." Also called mutuality.

NAR National Association of REALTORS®.

narrative report A thorough appraisal report in which the appraiser summarizes the data and the appraisal methods used, to convince the reader of the soundness of the estimate; a more comprehensive presentation than a form report or an opinion letter.

negligence Failure to exercise reasonable care; conduct that falls below the standard of care that a reasonable person would exercise under the circumstances.

negotiable instrument An instrument containing an unconditional promise to pay a certain sum of money to order or to bearer, on demand or at a particular time. It can be a check, promissory note, bond, draft, or stock. See also: note, promissory.

NEPA National Environmental Policy Act.

net lease A lease requiring the tenant to pay the property's operating expenses (such as taxes, insurance, maintenance, and repairs), in addition to the rent paid to the landlord.

net listing A listing agreement in which sellers set a net amount they are willing to accept for the property. If the actual selling price exceeds that amount, the broker is entitled to keep the excess as the commission.

net operating income The income that is capitalized to estimate the property's value; calculated by subtracting the property's operating expenses (fixed expenses, maintenance expenses, and reserves for replacement) from the effective gross income. (Note that debt service is not subtracted in calculating net income.)

net proceeds The amount of money a property seller will receive from the sale after all selling costs have been paid.

net worth An individual's personal financial assets, minus that person's personal liabilities.

nominal interest rate The interest rate stated in a promissory note. Also called the note rate or coupon rate. Compare: annual percentage rate.

nonagency An arrangement in which a real estate licensee acts as a facilitator or go-between for a seller and a buyer, without establishing an agency relationship with either party.

nonconforming loan A loan that does not meet the standardized underwriting criteria of the secondary market. May require the borrower to pay a higher interest rate. See also: loan, conforming.

nonconforming use A property use that does not conform to current zoning requirements, but is allowed because the property was being used in that way before the present zoning ordinance was enacted.

nonpossessory interest An interest in property that does not include the right to possess and occupy the property; typically an encumbrance, such as a lien or an easement.

notarize To have a document certified by a notary public.

notary public Someone who is officially authorized to witness and certify the acknowledgment made by someone signing a legal document.

note See: note, promissory.

note, demand A promissory note that is due whenever the holder of the note demands payment.

note, installment A promissory note that calls for regular payments of principal and interest until the debt is fully paid.

note, promissory A written promise to repay a debt; it may or may not be a negotiable instrument.

note, straight (term) A promissory note that calls for regular payments of interest only, so that the entire principal amount is due in one lump sum at the end of the loan term.

notice, actual Actual knowledge of a fact, as opposed to knowledge imputed by law (constructive notice).

notice, constructive See: constructive notice.

notice of default A notice sent by a secured creditor to the debtor, informing the debtor that the debtor breached the loan agreement.

notice of nonresponsibility A notice that property owners may record and post on the property to protect their title against mechanics' liens, when someone other than the owner (such as a tenant) has ordered work on the property.

notice of sale A notice stating that foreclosure proceedings have been commenced against a property.

notice to quit A notice to a tenant, demanding that the tenant vacate the leased property.

novation 1. The withdrawal of one party to a contract and the substitution of a new party, relieving the withdrawing party of liability. 2. The substitution of a new obligation for an old one.

nuisance A use of property that is offensive or annoying to neighboring landowners or to the community.

obligatory advances Disbursements of construction loan funds that the lender is obligated to make (by prior agreement with the borrower) when the borrower has completed certain phases of construction.

obsolescence Any loss in value (depreciation) due to reduced desirability and usefulness.

obsolescence, economic Loss in value resulting from factors outside the property itself, such as proximity to an airport. Also called external obsolescence, external inadequacy, or locational obsolescence. Outside the property boundary and incurable.

obsolescence, functional See: functional obsolescence.

obsolescence, locational See: obsolescence, economic.

offer The action of one person (the offeror) in proposing a contract to another (the offeree); if the offeree accepts the offer, a binding contract is formed.

offeree One to whom a contract offer is made.

offeror One who makes a contract offer.

open listing A nonexclusive listing, given by sellers to as many brokers as they choose. If the property is sold, a broker is only entitled to a commission if the broker was the procuring cause of the sale.

operation of law A change in conditions based on a change in law. A contract could be made void by a change of law making the purpose illegal.

option A contract giving one party the right to do something, without obligating the party to do it.

optionee The person to whom an option is given.

optionor The person who gives an option.

option to purchase An option giving the optionee the right to buy property owned by the optionor at an agreed price during a specified period.

ordinance A law passed by a local legislative body, such as a city council.

orientation The placement of a house on its lot, with regard to its exposure to the sun and wind, privacy from the street, and protection from outside noise.

origination fee A fee a lender charges a borrower upon making a new loan, intended to cover the administrative costs of making the loan.

overimprovement An improvement that is more expensive than justified by the value of the land.

owner's policy A policy of title insurance that protects the owner of property from financial loss because of unidentified defects in the title. In the case of the sale of property, this is also called a buyer's policy.

ownership Title to property, dominion over property; the rights of possession and control.

ownership, concurrent Shared ownership of one piece of property by two or more individuals, each owning an undivided interest in the property (as in a tenancy in common or joint tenancy). Also called multiple ownership, co-ownership, or co-tenancy.

ownership in severalty Ownership by one individual or entity; sole ownership.

package mortgage A mortgage used in home financing that is secured by certain items of personal property (such as appliances or carpeting) in addition to the real property.

panic selling See: blockbusting.

parallels Imaginary lines running east and west, parallel to the equator. Also called latitude lines.

parcel A lot or piece of real estate, especially a specified part of a larger tract.

partial performance When one party to a contract has not completely accomplished all the terms of the agreement, but the other party agrees to accept the incomplete performance and consider the contract discharged.

partial release clause 1. A clause in a blanket mortgage that allows the borrower to get part of the security property released from the lien when a certain portion of the debt has been paid or other conditions are fulfilled. Often called a partial release clause. 2. A clause in a contract for deed providing for a deed to a portion of the land to be delivered when a certain portion of the contract price has been paid. Also known as a deed release provision.

partial satisfaction The instrument given to the borrower when part of the security property is released from a blanket mortgage under a partial release clause.

partially amortized loan A loan with equal consecutive payments of principal and interest calculated so that at the end of the term there is still a balance larger than the last regular payment. The balance is called a balloon payment.

partition The division of a property among its co-owners, so that each owns part of it in severalty; this may occur by agreement of all the co-owners (voluntary partition), or by court order (judicial partition).

partner, general A partner who has the authority to manage and contract for a general or limited partnership, and who is personally liable for the partnership's debts.

partner, limited A partner in a limited partnership who is primarily an investor and does not participate in the management of the business, and who is not personally liable for the partnership's debts.

partnership An association of two or more persons to carry on a business for profit. The law generally regards a partnership as a group of individuals, not as an entity separate from its owners. Compare: corporation.

partnership, general A partnership in which each member has a right to manage the business and share in the profits, as well as responsibility for the partnership's debts. All of the partners are general partners.

partnership, limited A partnership made up of one or more general partners and one or more limited partners.

party wall A wall located on the boundary line between two adjoining parcels of land that is used or intended to be used by the owners of both properties.

patent The instrument used to convey government land to a private individual.

payee In a promissory note, the party who is entitled to be paid; the creditor or lender. Compare: maker.

per annum Per year; usually refers to an annual rate of expense.

per diem Per day; usually refers to the daily rate of an expense, or to a daily stipend paid.

percentage lease A lease in which the rent is based on a percentage of the tenant's monthly or annual gross sales.

periodic tenancy See: estate from period to period.

personal property Any property that is not real property; movable property not affixed to land. Also called chattels or personality.

personality Personal property.

physical deterioration Loss in value (depreciation) resulting from wear and tear or deferred maintenance.

physical life An estimate of the time a building will remain structurally sound and capable of being used. Compare: economic life.

plaintiff The party who brings or starts a civil lawsuit; the one who sues.

planned unit development (PUD) A development (usually residential) with small, clustered lots designed to leave more open space than traditional subdivisions.

planning commission A local government agency responsible for preparing the community's master development plan.

plat A detailed survey map of a subdivision, recorded in the county where the land is located. Subdivided property is often called platted property.

plot plan A plan showing lot dimensions and the layout of improvements (such as buildings and landscaping) on a property site.

plottage The increment of value that results when two or more lots are combined to produce greater value. Also called the plottage increment.

PMI See: insurance, private mortgage.

point One percent of the principal amount of a loan. See also: discount points.

point of beginning (POB) The starting point in a metes-and-bounds description; a monument or a point described by reference to a monument.

points See: discount points.

police power The constitutional power of the state government (delegated to local governments) to enact and enforce laws for the protection of the public's health, safety, morals, and general welfare. Many land use laws such as zoning and environmental limitations are part of police power.

possession 1. The holding and enjoyment of property. 2. Actual physical occupation of real property.

possessory interest An interest in property that includes the right to possess and occupy the property. The term includes all estates (leasehold as well as freehold), but does not include encumbrances.

power of attorney A document authorizing one person (the attorney in fact) to act as another's agent, to the extent stated in the instrument.

prepayment Paying off part or all of a loan before payment is due.

prepayment penalty A penalty charged to a borrower who prepays.

prepayment privilege A borrower's right to pay off a loan before it is due, in the absence of a prepayment penalty provision.

prescription Acquiring an interest in real property (usually an easement) by using it openly and without the owner's permission for the period prescribed by statute.

prescriptive easement The easement gained by prescription.

primary (employing) broker The managing broker of a brokerage firm responsible to supervise all other employed licensees.

primary mortgage market The market in which mortgage loans are originated, where lenders make loans to borrowers. Also called the local market. Compare: secondary mortgage market

prime rate The interest rate a bank charges its largest and most desirable customers.

principal 1. One who grants another person (an agent) authority to represent him or her in dealings with third parties. 2. One of the parties to a transaction (such as a buyer or seller), as opposed to those who are involved as agents or employees (such as a broker or escrow agent). 3. In regard to a loan, the amount originally borrowed, as opposed to the interest.

principal meridian In the rectangular survey system, the main north-south line in a particular grid, used as the starting point in numbering the ranges.

principal residence Real property that is the owner's home, his or her main dwelling. Under the federal income tax laws, a person can only have one principal residence at a time.

principle of conformity An appraisal principle which holds that the maximum value of property is realized when there is a reasonable degree of social and economic homogeneity (similarity) in the neighborhood. Property values are maintained in neighborhoods where the properties are all similar. See also: progression and regression.

principle of contribution An appraisal principle holding that the value of real property is greatest when the improvements produce the highest return commensurate with their cost (the investment). Also called the principle of increasing and decreasing returns.

principle of substitution A principle of appraisal holding that the maximum value of a property is set by how much it would cost to obtain another property that is equally desirable, assuming that there would not be a long delay or significant incidental expenses involved in obtaining the substitute.

prior appropriation A system of allocating water rights, under which a person who wants to use water from a certain lake or river is required to apply for a permit; a permit has priority over other permits that are issued later. Compare: riparian rights.

private restrictions Restrictions on the use of land that are contained in deeds or contracts; as opposed to public restrictions, which are imposed by zoning laws and other government regulations.

probate A judicial proceeding in which the validity of a will is established and the executor is authorized to distribute the estate property; or, when there is no valid will, in which an administrator is appointed to distribute the estate to the heirs.

probate court A court that oversees the distribution of property under a will or intestate succession.

procuring cause The real estate agent who is primarily responsible for bringing about a sale—for example, by negotiating the agreement between the buyer and seller. The agent who produces a buyer ready, willing, and able to buy the property on the seller's terms.

progression Part of the principle of conformity holding that a property of lesser value tends to be worth more when it is located in an area with properties of greater value than it would be if located elsewhere. A smaller house surrounded by large houses will be more valuable than the same house surrounded by similar-sized houses. The opposite is the regression. See also: conformity.

promissory note See: note, promissory.

property 1. The rights of ownership in a thing, such as the right to use, possess, transfer, or encumber it. 2. Something that is owned.

property manager A person hired by a property owner to administer, market, and maintain property, especially rental property.

property tax See: tax, property.

proprietary lease In a cooperative, the right of a shareholder/resident to occupy a particular unit.

proration The process of dividing or allocating something (especially a sum of money or an expense) proportionately, according to time, interest, or benefit.

public record The official collection of legal documents that individuals have filed with the county recorder in order to make the information contained in them public.

puffing Superlative statements about the quality of a property that should not be considered assertions of fact.

purchase agreement A contract in which a seller promises to convey title to real property to a buyer in exchange for the purchase price. Also called a purchase and sale agreement, deposit receipt, earnest money agreement, sales contract, or contract of sale.

purchase money mortgage 1. When a seller extends credit to a buyer to finance the purchase of the property, accepting a mortgage instead of cash. Sometimes called a carryback loan. 2. In a more general sense, any loan the borrower uses to buy the security property (as opposed to a loan secured by property the borrower already owns).

qualified acceptance See: counteroffer.

qualified fee A fee estate subject to a limitation or condition. Also called a defeasible fee. Ownership could be lost by violating the condition.

qualifying standards The standards a lender requires a loan applicant to meet before a loan will be approved. Also called underwriting standards.

quiet enjoyment Use and possession of real property without interference from the previous owner, the lessor, or anyone else claiming title. See also: covenant of quiet enjoyment.

quiet title action A lawsuit to determine who has title to a piece of property, or to remove a cloud from the title.

quitclaim deed A deed that conveys any interest in a property that the grantor has at the time the deed is executed, without warranties. Also called a problem solver. Compare: deed, correction.

range In the rectangular survey system, a strip of land six miles wide, running north and south.

range lines In the rectangular survey system, the north-south lines (meridians) located six miles apart.

ratify To confirm or approve after the fact an act that was not authorized when it was performed.

real estate Land and everything attached to or appurtenant to it, including the improvements on the land and the rights that go with ownership of the land. Also called realty or real property. Compare: personal property.

real estate contract 1. A purchase agreement. 2. A contract for deed. 3. Any contract having to do with real property.

real property Land and everything attached to or appurtenant to it, including the improvements on the land and the rights that go with ownership of the land. Also called realty or real estate. Compare: personal property.

REALTOR® A real estate agent who is an active member of a state and local real estate board that is affiliated with the National Association of REALTORS®.

realty See: real property.

recapture Recovery by the investor of money invested in real estate.

receiver A person appointed by a court to manage and look after property or funds involved in litigation or foreclosure.

reconciliation The final step in an appraisal, when the appraiser assembles and interprets the data in order to arrive at a final value estimate. Never an average. Also called correlation.

reconveyance In states where deeds of trust are used, releasing the security property from the lien created by a deed of trust by recording a deed of reconveyance (the equivalent of a satisfaction of mortgage).

recording Filing a document at the county recorder's office, so that it will be placed in the public record and give constructive notice.

rectangular survey system A system of grids made up of range and township lines that divide the land into townships, which are further subdivided into sections; a particular property is identified by its location within a particular section, township, and range. Also called the government survey system or the section, township, and range system.

redemption 1. Payment of all delinquent amounts, plus costs, by a defaulting mortgagor, thereby reinstating the loan and preventing foreclosure. 2. Payment of whatever the foreclosure sale purchaser paid for the property, plus interest and expenses, which allows a mortgagor to keep the property after the foreclosure sale.

redemption, equitable right of The right of a mortgagor to cure the default and reinstate the loan before the foreclosure sale.

redemption, statutory right of See: statutory right of redemption.

redlining Refusal by a lender to make loans secured by property in a certain neighborhood because of the racial or ethnic composition of the neighborhood, in violation of fair lending laws.

regression Part of the conformity principle holding that a property of noticeably lower quality than those around it will tend to decrease the value of those neighboring properties; the opposite of progression. A well-maintained house next to a poorly maintained house will be less valuable than the same house surrounded by well-maintained houses. See also: conformity.

Regulation Z The Federal Reserve Board's regulation that implements the Truth in Lending Act. See also: Truth in Lending Act.

reinstate To prevent foreclosure by curing the default.

release 1. To give up a legal right. 2. A document in which a legal right is given up.

release clause See: partial release clause.

remainder A future interest that becomes possessory when a life estate terminates, and that is held by someone other than the grantor of the life estate; as opposed to a reversion, which is a future interest held by the grantor (or his or her successors in interest). Often called an estate in remainder.

remainderman The person who has an estate in remainder.

remaining economic life See: economic life.

rent Compensation paid by a tenant to the landlord in exchange for the possession and use of the property.

rent, contract The rent that is actually being paid on property that is currently leased.

replacement cost In appraisal, the current cost of constructing a building with the same utility as the subject property with modern materials and construction methods.

replevin Legal proceedings undertaken by a tenant to recover possession of personal belongings that have been unlawfully confiscated by a landlord (usually for nonpayment of rent).

reproduction cost In appraisal, the cost of constructing a replica (an exact duplicate) of the subject property, using the same materials and construction methods that were originally used, but at current prices.

rescission Termination of a contract when each party gives anything acquired under the contract back to the other party. (The verb form is *rescind*.) Compare: cancellation.

reservation A right retained by a grantor when conveying property; for example, mineral rights, an easement, or a life estate can be reserved in the deed.

reserves for replacement For income-producing property, regular allowances set aside to pay for the replacement of structures and equipment that are expected to wear out.

resident manager A salaried manager of a single apartment building or complex who resides on the property; unlike a property manager, a resident manager is not required to have a real estate license.

residual 1. A property's remaining value after the economic life of the improvements has been exhausted.

RESPA Real Estate Settlement Procedures Act. Regulates lenders and real estate agents.

restitution Restoring something to a person that he was unjustly deprived of.

restriction A limitation on the use of real property.

restriction, deed See: deed restriction.

restriction, private See: private restriction.

restriction, public A law or government regulation limiting or regulating the use of real property.

restrictive covenant See: covenant, restrictive.

reverse annuity mortgage A type of mortgage loan in which a homeowner borrows against the equity in the property in monthly installments. The lender provides monthly payments from the equity. (The mortgagee pays the mortgagor.) The loan is paid off when the owner sells the property or dies.

reversion A return of property rights at a future time. A landlord regains the right of possession at the termination of a lease through reversion. A future interest that becomes possessory when a temporary estate (such as a life estate) terminates, and that is held by the grantor (or her successors in interest). Often called an estate in reversion. Compare: remainder.

reverter The person who holds a life estate in reversion.

revocation Canceling an agreement or a license. A principal can revoke an agent's authority and a licensing authority can revoke a real estate licensee's license.

rezone See: zoning amendment.

right of survivorship The right of a surviving owner in a joint tenancy ownership. Surviving owners automatically gain ownership of the deceased owner's share.

right of way An easement that gives the holder the right to cross another person's land.

riparian land Land that is adjacent to or crossed by a body of water, especially flowing water such as a stream or a river. Compare: littoral land.

riparian rights The water rights of a landowner whose property is adjacent to or crossed by a body of water. Compare: appropriation, prior.

running with the land Binding or benefiting the successive owners of a piece of property, rather than terminating when a particular owner transfers his interest. Usually said in reference to an easement or a restrictive covenant.

sale-leaseback A form of real estate financing in which the owner of industrial or commercial property sells the property and leases it back from the buyer; in addition to certain tax advantages, the seller/lessee obtains more cash through the sale than would normally be possible by borrowing and mortgaging the property because lenders will not often lend 100 percent of the property's value.

salesperson In real estate, a licensee who works for a broker and does not have the authority to supervise others.

sales comparison approach See: market data approach.

sandwich lease A leasehold interest lying between the property owner's interest and the interest of the tenant in possession; for example, when a tenant subleases the property to a subtenant, the original tenant's interest is sandwiched between the interest of the landlord and that of the subtenant.

satisfaction of mortgage The document a mortgagee gives the mortgagor when the mortgage debt has been paid in full, acknowledging that the debt has been paid and the mortgage is no longer a lien against the property; should always be recorded.

savings and loan association A type of financial institution that has traditionally specialized in home mortgage loans.

savings bank A type of financial institution that has traditionally emphasized consumer loans and accounts for small depositors.

scarcity A limited or inadequate supply of something; this is one of the four elements of value (along with utility, demand, and transferability).

secondary financing Money borrowed to pay part of the required down payment or closing costs for a first loan, when the second loan is secured by the same property that secures the first loan.

secondary mortgage market The market in which investors (including Fannie Mae [FNMA], Freddie Mac, and Ginnie Mae) purchase and sell real estate loans from primary lenders; also called the national market.

section In the rectangular survey system, a section is one mile square and contains 640 acres. There are 36 sections in a township.

security agreement Under the Uniform Commercial Code, a document that creates a lien on personal property being used to secure a loan. Typically used in conjunction with a financing statement.

security deposit Money a tenant gives a landlord at the beginning of the tenancy to protect the landlord in case the tenant fails to comply with the terms of the lease; the landlord may retain all or part of the deposit to cover unpaid rent or repair costs at the end of the tenancy.

security instrument A document that creates a voluntary lien to secure repayment of a loan; for debts secured by real property, it is either a mortgage or a deed of trust.

security interest The interest a creditor may acquire in the debtor's property to ensure that the debt will be paid; the interest created by a security agreement or a mortgage.

security property The property that a borrower gives a lender a voluntary lien against, so that the lender can foreclose if the borrower defaults on the loan.

seizin Actual possession of a freehold estate; ownership. Sometimes spelled seizin or seizen.

seller financing Typically either a purchase money mortgage or contract for deed. 1. Purchase money mortgage: When a seller extends credit to a buyer to finance the purchase of the property, accepting a mortgage instead of cash. Sometimes called a carryback loan. 2. Contract for deed: A contract for the sale of real property in which the buyer (the vendee) pays in installments; the buyer takes possession of the property immediately, but the seller (the vendor) retains legal title until the full price has been paid. Also called an installment land contract, or land contract.

separate property In a community property state, property owned by a married person that is not community property; includes property acquired before marriage or by gift or inheritance after marriage.

setback requirements Provisions in a zoning ordinance that do not allow structures to be built within a certain distance of the property line.

settlement 1. Closing. 2. An agreement between the parties to a civil lawsuit in which the plaintiff agrees to drop the suit in exchange for money or the defendant's promise to do or refrain from doing something.

settlement statement A document that presents a final, detailed accounting for a real estate transaction, listing each party's debits and credits and the amount each will receive or be required to pay at closing. Also called a closing statement.

severalty Ownership by one individual or entity; sole ownership.

severance 1. Termination of a joint tenancy. 2. The permanent removal of a natural attachment, fixture, or appurtenance from real property, which transforms the item into personal property.

severance, constructive When a landowner enters into a contract to sell an appurtenance or natural attachment, the contract constructively severs the item from the land—making it the personal property of the buyer—even before the buyer has actually removed it from the land. For example, when a landowner sells a stand of timber, the trees are constructively severed from the land even before the buyer comes to chop them down.

shareholder See: stockholder.

sheriff's sale A mortgage foreclosure sale. Sometimes called an execution sale.

sheriff's deed The deed used to convey a property after the redemption rights have expired in a foreclosure through the courts.

special agent An agent with limited authority to do a specific thing or conduct a specific transaction. Has no power to bind the principal.

special assessment A tax levied only against the properties that have benefited from a public improvement (such as a sewer or a street light), to cover the cost of the improvement; creates a special assessment lien.

special (limited) warranty deed A conveyance deed with the warranties limited to the ownership period of the grantor.

specific lien A lien against a particular named parcel of property. The lien may be foreclosed by having the collateral property sold and the proceeds applied to the loan balance.

specific performance A legal remedy in which a court orders someone who has breached a contract to actually perform the contract as agreed, rather than simply paying money damages to the other party.

spot zoning A rezone of one property or a small area within a neighborhood.

SRA A member of the Society of Real Estate Appraisers.

SREA The Society of Real Estate Appraisers.

statute A law enacted by a state legislature or the U.S. Congress.

statute of frauds A state law that requires certain types of contracts to be in writing and signed in order to be enforceable.

statute of limitations A law requiring a particular type of lawsuit to be filed within a specified time after the event giving rise to the suit occurred.

statutory lien A lien created by statute, such as a government lien for property taxes.

statutory redemption The right of mortgagors to keep their property after a foreclosure sale by paying the amount that the highest bidder at the sale paid, plus interest and expenses. Also called post-sale redemption.

steering Channeling prospective buyers or tenants to or away from particular neighborhoods based on their race, religion, national origin, or ancestry, in violation of anti-discrimination laws.

step-up lease A type of graduated lease in which the rent increases are part of the lease document.

stockholder An individual who holds an ownership share in a corporation (and has limited liability). Also called a shareholder.

straight loan A loan in which no principal is paid during the loan and the entire amount is due at the end of the term. Interest may be paid periodically or at the end depending on the agreement. Also called term loan.

subagent A person to whom an agent has delegated authority, so that the subagent can assist in carrying out the principal's orders; the agent of an agent.

subcontractor A contractor who, at the request of the general contractor, provides a specific service, such as plumbing or drywalling, in connection with the overall construction project.

subdivision 1. A piece of land divided into two or more parcels. 2. A residential development.

subdivision plat See: plat.

subdivision regulations State and local laws that must be complied with before land can be subdivided.

subject to When purchasers take property subject to a mortgage, they are not personally liable for paying off the loan; in case of default, however, the property can still be foreclosed on.

sublease An arrangement in which a tenant grants someone else the right to possession of the leased property for part of the remainder of the lease term; as opposed to an assignment, in which the tenant gives up possession for the entire remainder of the lease term.

subordination clause A provision in a mortgage that permits a later mortgage to have higher lien priority than the one containing the clause.

subrogation The substitution of one person in the place of another with reference to a lawful claim or right. For instance, a title company that pays a claim on behalf of its insured, the property owner, is subrogated to any claim the owner successfully undertakes against the former owner.

substitution, principle of See: principle of substitution.

substitution of liability A buyer wishing to assume an existing loan may apply for the lender's approval; once approved, the buyer assumes liability for repayment of the loan, and the original borrower (the seller) is released from liability.

succession Acquiring property by will or inheritance.

supply and demand, principle of A principle holding that value (price) varies directly with demand and inversely with supply; that is, the greater the demand the greater the value (price), and the greater the supply the lower the value.

surrender Giving up an estate (such as a life estate or leasehold) before it has expired.

survey The process of precisely measuring the boundaries and determining the area of a parcel of land. Used to produce a plat map and to identify encroachments.

survivorship, right of See: right of survivorship.

syndicate An association formed to operate an investment business. A syndicate is not a recognized legal entity; it can be organized as a corporation, partnership, limited liability company, or trust.

tacking Adding together successive periods of use or possession by more than one person to make up the statutory period required for adverse possession or prescription.

taking When the government acquires private property for public use by condemnation, it's called "a taking." The term is also used in inverse condemnation lawsuits, when a government action has made private property virtually useless.

tax, ad valorem A tax assessed on the value of property.

tax, excise A tax on the production, sale, or consumption of certain commodities. The state deed tax is an example of an excise tax.

tax, general real estate An annual ad valorem tax levied on real property. Often called property taxes.

tax, improvement See: special assessment.

tax, property 1. The general real estate tax. 2. Any ad valorem tax levied on real or personal property.

tax credit A credit that is subtracted directly from the amount of tax owed. Compare: deduction.

tax-free exchange A transaction in which one piece of property is traded for a piece of like-kind property. If the property involved is held for investment or the production of income, or used in a trade or business, tax on the gain may be deferred.

tax sale Sale of property after foreclosure of a tax lien.

tenancy Lawful possession of real property; an estate.

tenancy, joint See: joint tenancy.

tenancy, month-to-month See: estate from period to period.

tenancy, periodic See: estate from period to period.

tenancy, term See: estate for years.

tenancy at sufferance See: estate at sufferance.

tenancy at will See: estate at will.

tenancy by the entirety A special form of joint ownership of property by husband and wife used in some states.

tenancy for years See: estate for years.

tenancy in common A form of concurrent ownership in which two or more persons each have an undivided interest in the entire property, but no right of survivorship. Compare: tenancy, joint.

tenant Someone in lawful possession of real property; especially, someone who has leased property from the owner.

tenant, dominant A person who has easement rights on another's property; either the owner of a dominant tenement, or someone who has an easement in gross.

tenant, holdover A lessee who remains in possession of the property after the lease term has expired.

tenant, life Someone who owns a life estate; not necessarily used as the measuring life for the life estate.

tenant, servient The owner of a servient tenement—that is, someone whose property is burdened by an easement.

tenement, dominant Property that receives the benefit of an easement appurtenant.

tenement, servient Property burdened by an easement. In other words, the owner of the servient tenement (the servient tenant) must allow someone who has an easement (the dominant tenant) to use the property.

tenements Everything of a permanent nature associated with a piece of land that is ordinarily transferred with the land. Tenements are both tangible (e.g., buildings) and intangible (e.g., air rights).

tenure The period of time during which a person holds certain rights with respect to a piece of real property.

term A prescribed period of time; especially, the length of time a borrower has to pay off a loan, or the duration of a lease.

term loan See: straight loan.

testate Refers to someone who has died and left a will. Compare: intestate.

testator A person who makes a will. (If it is a woman, she may be referred to as a testatrix.)

third party 1. A person seeking to deal with a principal through an agent. 2. In a transaction, someone who is not one of the principals.

tight money market A situation in which loan funds are scarce, resulting in high interest rates and discount points.

TILA Truth in Lending Act.

time is of the essence A clause in a contract that means performance on the exact dates specified is an essential element of the contract; failure to perform on time is a material breach.

time-share An ownership arrangement in which co-owners each have an exclusive right to use a condominium unit (or other property) for a specified time period each year.

title Lawful ownership of real property. Also, the deed or other document that is evidence of that ownership.

title, abstract of See: abstract of title.

title, clear See: clear title.

title, color of Title that appears to be good title, but which in fact is not; commonly based on a defective instrument, such as an invalid deed.

title, equitable The vendee's interest in property under a real estate contract. Also called an equitable interest. Compare: title, legal.

title, imperfect Defective or incomplete title. Adverse possessors have imperfect title until they obtain a quitclaim deed from the owner of the land adversely possessed, or they prevail in a quiet title action confirming that the requirements for acquiring title by continuous use have been met.

title, legal The vendor's interest in property under a real estate contract. Compare: title, equitable.

title, marketable See: marketable title.

title commitment A binding agreement by a title insurance company to insure the marketability of title under stated conditions and with listed exclusions and exceptions.

title company A title insurance company.

title insurance Insurance that protects against losses resulting from undiscovered title defects. An owner's policy protects the buyer, while a mortgagee's policy protects the lien position of the buyer's lender.

title opinion An attorney's letter of opinion on the condition of title based on evaluation of an abstract. The attorney will normally state the present owner of record and the current encumbrances and other title limitations found in the public record.

title plant A duplicate (usually microfilmed) of a county's public record, maintained by a title company at its offices for use in title searches.

title report A report issued by a title company, disclosing the condition of the title to a specific piece of property, before the actual title insurance policy is issued. Often called a preliminary title report. The title report may be part of a title commitment.

title search An investigation of the public record to determine all rights and encumbrances affecting title to a piece of property.

title theory The theory holding that a mortgage gives the lender legal title to the security property while the debt is being repaid. Most states follow lien theory instead. Compare: lien theory.

topography The contours of the surface of the land (level, hilly, steep, etc.).

torrens system A system of land registration used in some states, which allows title to be verified without a standard title search; title to registered land is free of all encumbrances or claims not registered with the title registrar.

tort A breach of a duty imposed by law (as opposed to a duty voluntarily taken on in a contract) that causes harm to another person, giving the injured person the right to sue the one who breached the duty. Also called a civil wrong (in contrast to a criminal wrong, a crime).

total finance charge Under the Truth in Lending Act, the total finance charge on a loan includes interest, any discount points paid by the borrower, the loan origination fee, and mortgage insurance costs.

town house Combines ownership in fee simple with tenancy in common (an undivided interest in the common elements). In a townhouse development, each owner not only owns a dwelling unit, but also owns the lot.

township In the rectangular survey system, a parcel of land six miles square, containing 36 sections; the intersection of a range and a township tier.

township lines Lines running east-west, spaced six miles apart, in the rectangular survey system.

township tier In the rectangular survey system, a strip of land running east-west, six miles wide and bounded on the north and south by township lines.

trade fixtures Articles of personal property attached to real property by a tenant for use in a trade or business, which the tenant is allowed to remove at the end of the lease.

transferability If an item is transferable, then ownership and possession of that item can be conveyed from one person to another. In appraisal, transferability is one of the four elements of value, along with utility, scarcity, and demand.

trespass An unlawful physical invasion of property owned by another.

trust A legal arrangement in which title to property (or funds) is vested in one or more trustees, who manage the property on behalf of the trust's beneficiaries, in accordance with instructions set forth in the document establishing the trust.

trust account A bank account, separate from a real estate broker's personal and business accounts, used to segregate trust funds from the broker's own funds.

trust deed See: deed of trust.

trustee 1. A person appointed to manage a trust on behalf of the beneficiaries. 2. A neutral third party appointed in a deed of trust to handle the nonjudicial foreclosure process in case of default.

trustee in bankruptcy An individual appointed by the court to handle the assets of a person in bankruptcy.

trustee's sale A nonjudicial foreclosure sale under a deed of trust.

trust funds Money or things of value received by an agent, not belonging to the agent but being held for the benefit of others. Example: earnest money held for a purchase agreement.

trustor The borrower on a deed of trust. Also called the grantor.

Truth in Lending Act (TILA) The act implemented by Regulation Z requiring disclosure of the true cost of borrowing for consumer credit transactions.

underimprovement An improvement which, because of deficiency in cost or size, is not the most profitable use of the land; not the highest and best use.

underwriting In real estate lending, the process of evaluating a loan application to determine the probability that the applicant would repay the loan, and matching the risk to an appropriate rate of return. Sometimes called risk analysis.

undivided interest A co-owner's interest, giving him or her the right to possession of the whole property, rather than to a particular section of it.

undue influence Exerting excessive pressure on someone so as to overpower the person's free will and prevent him or her from making a rational or prudent decision; often involves abusing a relationship of trust. Undue influence can make a contract voidable.

unenforceable An agreement or supposed agreement that the courts will not hold the parties responsible to perform.

Uniform Commercial Code A body of law adopted in slightly varying versions in most states, which attempts to standardize commercial law dealing with such matters as negotiable instruments and sales of personal property. Its main applications to real estate law concern security interests in fixtures and bulk transfers.

unilateral contract A contract that is accepted by performance; the offeror has promised to perform his or her side of the bargain if the other party performs, but the other party has not promised to do so. Compare: contract, bilateral.

unit owners association In a condominium or other common interest community, an organization that all unit owners automatically belong to, which governs the common elements of the condominium. Often called a condominium association.

universal agent An agent authorized to do everything that can be lawfully delegated to a representative. Generally created by a power of attorney or court order. Has unlimited power to bind the principal.

unjust enrichment An undeserved benefit; a court generally will not allow a remedy (such as forfeiture of a contract for deed) if it would result in the unjust enrichment of one of the parties.

unlawful detainer A summary legal action to regain possession of real property; especially, a suit filed by a landlord to evict a defaulting tenant.

useful life See: economic life.

usury Charging an interest rate that exceeds legal limits.

utility The ability of an item to satisfy some need and/or arouse a desire for possession. In appraisal, one of the four elements of value, with scarcity, demand, and transferability.

VA U.S. Department of Veterans Affairs.

VA-guaranteed loan A home loan made by an institutional lender to an eligible veteran, where the Department of Veterans Affairs will reimburse the lender for losses if the veteran borrower defaults.

vacancy factor See: bad debt/vacancy factor.

valid The legal classification of a contract that is binding and enforceable in a court of law.

valuable consideration See: consideration.

valuation See: appraisal.

value Generally, how much something is worth; the present worth of future benefits. In real estate, the term is most often used to refer to market value.

value, assessed The value placed on property by the taxing authority (the county assessor, for example) for the purposes of taxation.

value, face The value of an instrument, such as a bond, that is indicated on the face of the instrument itself.

value, market See: market value.

value, salvage The estimated amount for which a structure can be sold at the end of its useful life.

value, subjective The value of a product in the eyes of a particular person.

value, utility The value of a property to its owner or to a user. Also called value in use.

value in exchange See: market value.

variable interest rate A loan interest rate that can be adjusted periodically during the loan term, as in the case of an adjustable-rate mortgage.

variance Permission (obtained from the local zoning authority) to build a structure in a way that violates the strict terms of the zoning ordinance. Usually a minor deviation.

vendee A buyer or purchaser; particularly, someone buying property under a contract for deed.

vendor A seller; particularly, someone selling property by means of a contract for deed.

vested right An immediate fixed right, interest, or title in real property, even though the right to possession of the property may not occur until sometime in the future.

void Having no legal force or effect.

voidable contract A contract that one of the parties can disaffirm without liability because of lack of capacity or a negative factor affecting consent, such as fraud or duress.

waiver The voluntary relinquishment or surrender of a right.

warranty, implied In a sale or lease of property, a guarantee created by operation of law, whether or not the seller or landlord intended to offer it.

warranty, forever In a deed, a promise that the grantor will bear the expense of defending the grantee's title if anyone asserts a rightful claim against it. See also: general warranty deed.

warranty of habitability See: habitability, implied warranty of.

waste Destruction, damage, or material alteration of property by someone in possession who holds less than a fee estate (such as a life tenant or a lessee), or by a co-owner.

water rights The right to use water from a body of water. See also: appropriation, prior; littoral rights; riparian rights.

water table The level at which water may be found, either at the surface or underground.

will A person's stipulation regarding how her estate should be disposed of after she dies. Also called a testament.

will, formal A will that meets the statutory requirements for validity; as a general rule, it must be in writing and signed in the presence of at least two competent witnesses.

will, holographic A will written entirely in the testator's handwriting, which may be valid in some states even if it was not witnessed.

without recourse A qualified or conditional endorsement on a negotiable instrument, which relieves the endorser of liability under the instrument.

words of conveyance The essential portion of a deed stating an intention to convey the property to the grantee. Also called a granting clause.

writ of execution A court order directing a public officer (such as the sheriff) to seize and sell property to satisfy a debt.

writ of possession A court order issued after an unlawful detainer action, informing the tenant to vacate the landlord's property within a specified period or be forcibly removed by the sheriff.

yield The return of profit to an investor on an investment, stated as a percentage of the amount invested.

zone An area of land set off for a particular use or uses, subject to certain restrictions.

zoning Government regulation of the uses of property within specified areas.

zoning amendment An amendment to a zoning ordinance, usually changing the uses allowed in a particular zone. Also called a rezone.